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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

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UNITED STATES OF AMERICA	*
	*
	* 09-cr-30-01-02-GZS
v.	* July 6, 2009
	* 12:50 p.m.
EDWARD and ELAINE BROWN	*
	*
* * * * *	

DAY 5  
AFTERNOON SESSION  
TRANSCRIPT OF TRIAL  
BEFORE THE HONORABLE GEORGE Z. SINGAL  
AND A JURY

Appearances:

For the Government:	Arnold Huftalen, AUSA Terry Ollila, AUSA U.S. Attorney's Office 53 Pleasant Street Concord, NH 03301
For Edward Brown:	Michael J. Iacopino, Esq. Kristin Clouser, Esq. Brennan, Caron, Lenehan & Iacopino 85 Brook Street Manchester, NH 03104
For Elaine Brown:	Bjorn Lange, Asst. Fed. Defender Federal Defender's office 22 Bridge Street Concord, NH 03301
Court Reporter:	Sandra L. Bailey, LCR, CM, CRR Official Court Reporter United States District Court 55 Pleasant Street Concord, NH 03301 (603)225-1454

1 I N D E X

2

3 Witness Direct Cross Redirect Recross

4 MICHAEL POWELL

5 By Mr. Huftalen 11

By Mr. Lange 3 13

6 By Mr. Iacopino 7

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AARON MCINTIRE

8 By Mr. Huftalen 15

9 By Mr. Iacopino 17

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DANIEL TANNER

11 By Mr. Huftalen 18 53

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CATHY SMITH

14 By Ms. Ollila 54

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16 JAMIE BERRY

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20 Exhibit ID Evid.

21 Government's Exhibit No. 12 28

Government's Exhibit No. 12g 29

22 Government's Exhibit No. 12d, 12e, 12f 30

Government's Exhibit No. 12c 38

23 Government's Exhibit No. 7a-1a 43

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24 Government's Exhibit No. 1h 71

25

1                               BEFORE THE COURT

2                               THE COURT: Ready for the jury?

3                               MR. HUFTALEN: Yes.

4                               THE COURT: Bring in the jury.

5                               BEFORE THE JURY

6                               THE COURT: Cross-examination, Mr. Lange.

7                               CROSS-EXAMINATION OF MICHAEL POWELL

8       BY MR. LANGE:

9               Q. Good afternoon, sir.

10           A. Good afternoon.

11           Q. Your responsibilities with the Bureau of  
12 Alcohol, Tobacco & Firearms is to determine whether  
13 particular items meet the various federal definitions  
14 under the gun control -- federal gun control law; right?

15           A. That is correct.

16           Q. The law draws a distinction, does it not,  
17 between firearms and destructive devices?

18           A. It does.

19           Q. Simply because something is a firearm does not  
20 mean it's a destructive device under the law; is that  
21 correct?

22           A. Correct.

23                       MR. LANGE: May I approach?

24                       THE COURT: You may.

25           Q. BY MR. LANGE: Sir, I have in my hand

1 Government's Exhibit 5m. Sir, I show you 5m. That is  
2 not a grenade, is it?

3 A. No, sir.

4 Q. That is not a missile?

5 A. No, sir.

6 Q. That is not a rocket?

7 A. No, sir.

8 Q. That is not a mine?

9 A. No, sir.

10 Q. That is not a booby trap?

11 A. No, sir. Doesn't appear to be.

12 Q. That is not a destructive device at least as  
13 you see it there?

14 A. Not as I see it here.

15 Q. You were asked to determine the significance  
16 of the various components that were brought down to you  
17 from Plainfield; is that right?

18 A. Yes, sir.

19 Q. You were given -- they arrived in evidence  
20 boxes or evidence bags, these various pipes and fittings  
21 and so forth?

22 A. Yes, sir.

23 Q. And you were asked to draw some conclusions as  
24 to whether or not they were firearms; is that right?

25 A. Yes, sir, that's correct.

1           Q.    In drawing those conclusions you applied all  
2 your expertise; correct?

3           A.    Yes, sir.

4           Q.    All of your knowledge?

5           A.    Yes, sir.

6           Q.    You didn't simply look at the items as they  
7 were given to you and say, oh, that's a firearm?

8           A.    No, sir.

9           Q.    You testified one of the items that you refer  
10 to as booby traps with a shotgun round, a live round?

11          A.    Yes, sir.

12          Q.    And the effect of that was to thereafter  
13 render the device inoperable without further replacement  
14 parts; right?

15          A.    Correct.

16          Q.    The spring broke?

17          A.    Correct.

18          Q.    The individual components of those devices,  
19 each of the individual components is legal; is that  
20 correct?

21          A.    Each of the components themselves, yes, sir.

22          Q.    It's when they're assembled, as you testified  
23 they were assembled, that they become firearms?

24          A.    If it can be shown, sir, that the combination  
25 of those parts, if the intent is to assemble a

1 destructive device, the parts themselves can be  
2 determined to be a destructive device or a firearm,  
3 whichever it is. If you take a gun and strip it down to  
4 all its component parts, you still have a firearm.

5 Q. But the average person looking at component  
6 parts of those items would not know what you found out  
7 by virtue of your experience and your testing in this  
8 case; right?

9 A. The average person probably would not, sir.

10 Q. And the only other question I have is you're  
11 probably very comfortable between -- going between the  
12 English measuring system and the metric system?

13 A. Somewhat.

14 Q. 37 millimeters would be approximately a little  
15 less than one and a half inches; is that right?

16 A. I'm not that familiar. Give me a moment.

17 (Pause.)

18 A. It would be more than an inch because -- I'm  
19 just doing some math in my head, but -- I don't have it  
20 memorized.

21 Q. More than an inch, certainly well more than  
22 half an inch?

23 A. Yes, sir.

24 MR. LANGE: Those are my questions.

25 THE COURT: Mr. Iacopino, cross-examination.

1 MR. IACOPINO: Yes, your Honor, thank you.

2 CROSS-EXAMINATION

3 BY MR. IACOPINO:

4 Q. Good afternoon, sir.

5 A. Good afternoon.

6 Q. Your Honor, can I ask that the government  
7 bring up their Exhibit 6a.

8 And while she's doing that, Agent Powell, you  
9 received essentially three separate exhibits at your lab  
10 in West Virginia; correct?

11 A. Without referring to my report I can't be  
12 sure. It seems like there was actually four.

13 Q. I stand corrected. You received four actual  
14 separately boxed exhibits that you received?

15 A. Yes, sir.

16 Q. And in photograph 6a -- your Honor, could I  
17 ask you to have the government put that up on the  
18 screen.

19 That is one of the exhibits that you received;  
20 correct?

21 A. Yes, sir. I have it labeled Exhibit 15.

22 Q. Right. And Exhibit 15 came to you in the form  
23 in the upper left-hand photograph of Exhibit 6a?

24 A. Yes, sir.

25 Q. I note in the lower right-hand corner you have

1 a little label there --

2 A. Yes.

3 Q. -- saying that the cotter pin was from  
4 Exhibit 17; correct?

5 A. Correct.

6 Q. So Exhibit 15 as it came to you was not  
7 equipped with a cotter pin, was it?

8 A. That's correct.

9 Q. It was not equipped with a trip wire, was it?

10 A. No, sir.

11 Q. And it was not equipped with a shotgun shell?

12 A. No, sir.

13 Q. Your Honor, I would ask if you could have the  
14 government bring up Exhibit 6a-1.

15 This is the second exhibit that you received  
16 at your lab in West Virginia; correct, sir?

17 A. Yes, sir.

18 Q. And did you receive it in essentially the  
19 condition displayed on the left-hand photograph?

20 A. No, sir.

21 Q. Those four things in the middle, the orange  
22 tags on them, were they disassembled when you received  
23 it?

24 A. They were not assembled.

25 Q. In fact, you assembled these; correct?



1           A.     That's correct.

2           Q.     What you received as the exhibit, 17, was a  
3     whole bunch of stuff just in a basket or some kind of  
4     box; correct?

5           A.     That's correct.

6           Q.     And in fact you went into that exhibit to get  
7     that cotter pin to try to show how Exhibit 15 works;  
8     correct?

9           A.     Correct.

10          Q.     Now I'd ask if the government, your Honor,  
11     could bring up Exhibit 6a-2.

12                     And this is the third exhibit that you  
13     received in your lab in West Virginia; is that correct,  
14     agent?

15          A.     Yes, sir.

16          Q.     Now, on the left-hand side of this exhibit  
17     there are a number of these things with the orange  
18     stickers on them. By the way, did you put the orange  
19     stickers on them?

20          A.     I did.

21          Q.     They didn't come to you that way?

22          A.     No, sir.

23          Q.     And that's the case, then, in the other  
24     exhibits as well; correct?

25          A.     Correct. All the orange stickers I applied.

1 Q. Is that the way that this exhibit was  
2 presented to you?

3 A. I don't understand your question.

4 Q. Well, did you assemble these ones?

5 A. No, they were fully assembled.

6 Q. None of them had cotter pins; correct?

7 A. No, sir.

8 Q. I'm not correct or they did not have cotter  
9 pins?

10 A. They did not have cotter pins.

11 Q. And none of them had trip wires; correct?

12 A. No, sir.

13 Q. And none of them had shotgun shells; correct?

14 A. No, sir.

15 Q. And the court exhibit that you had -- that you  
16 received, you entitled Exhibit 41; correct?

17 A. Without my report I can't remember.

18 Q. Do you have your report?

19 A. I don't have it, sir.

20 MR. IACOPINO: May I approach, your Honor?

21 THE COURT: You may.

22 Q. BY MR. IACOPINO: And agent, I'm just going to  
23 show you the last page of your report that references  
24 Exhibit 41. Does that refresh your recollection about  
25 Exhibit 41?

1 A. Yes, sir.

2 Q. And in fact, Exhibit 41 was of no relevance or  
3 value to you?

4 A. I wouldn't say they were of no value. I just  
5 said they were not regulated under the National Firearms  
6 Act or Gun Control Act.

7 Q. Nothing subject to regulation; correct?

8 A. Correct.

9 MR. IACOPINO: Thank you, your Honor, I have  
10 no further questions.

11 THE COURT: Government?

12 MR. HUFTALEN: Briefly.

13 REDIRECT EXAMINATION

14 BY MR. HUFTALEN:

15 Q. Mr. Powell, I had not asked you about  
16 destructive devices but Mr. Lange did, so let me focus  
17 there for a moment.

18 Under federal law can a firearm be classified  
19 as a destructive device?

20 A. Yes, sir.

21 MR. IACOPINO: Objection. Move to strike.  
22 Calls for a legal conclusion.

23 THE COURT: He opened it, Mr. Lange opened the  
24 issue on cross.

25 Q. How can a firearm be classified as a

1 destructive device?

2 A. Well, the -- one of the criteria is a firearm  
3 that has a barrel that exceeds one-half inch in bore  
4 diameter.

5 Q. The exhibits in 6d and 6b, the nine and the  
6 one, what was your testimony about the bore diameter or  
7 diameter of the barrel?

8 A. They exceeded eight/tenths of an inch.

9 Q. Mr. Lange showed you a Glock handgun which is  
10 marked as 5m.

11 THE COURT: You still have it -- Mr. Lange  
12 still has it in the back.

13 Q. Let me hand that to you. Now, that's  
14 certainly not a destructive device, is it?

15 A. No, sir.

16 Q. But in your professional opinion, is that a  
17 firearm?

18 A. Yes, sir, it is.

19 Q. It's not a grenade, it's a firearm; right?

20 A. Yes, sir.

21 Q. You put a 9mm round in that gun and you point  
22 it at somebody and you shoot, what happens?

23 A. You could kill the individual.

24 MR. HUFTALEN: Thank you. Nothing further.

25 THE COURT: Thank you. Mr. Lange?

1

2

RECROSS-EXAMINATION

3 BY MR. LANGE:

4 Q. The barrel on that is less than half an inch;  
5 is that right?

6 A. That is correct.

7 Q. And any firearm that has a barrel -- a  
8 diameter of the barrel of half an inch or less would not  
9 be a destructive device by virtue of the diameter of the  
10 barrel; is that right?

11 A. That's correct.

12 Q. It's only when the barrel exceeds a half inch,  
13 that together, the criteria of that being met, it may  
14 become a destructive device?

15 A. Yes, sir, it may become.

16 MR. LANGE: Thank you.

17 THE COURT: Mr. Iacopino?

18 MR. IACOPINO: Nothing further.

19 THE COURT: Government?

20 MR. HUFTALEN: No, thank you.

21 THE COURT: All right, thank you, you may step  
22 down.

23 MR. HUFTALEN: May the witness be excused.

24 THE COURT: Without objection, you may be  
25 excused.

1 MR. HUFTALEN: Aaron McIntire.

2 MR. IACOPINO: Your Honor, may we be seen at  
3 sidebar?

4 THE COURT: Of course. Witness, come right up  
5 here and have a seat at the witness stand.

6 AT SIDEBAR

7 MR. IACOPINO: Your Honor, my understanding is  
8 that the government is calling this witness, he's from  
9 the Concord Fire Department, I don't believe that he was  
10 involved at all out at the Brown residence. It's my  
11 understanding they are calling him to say that he has  
12 never seen the gas on the air tank system that they have  
13 here in a private home. It's irrelevant. It doesn't  
14 make any difference whether he has had any personal  
15 experience with anybody having it in their homes. So I  
16 would object to him being called as a witness.

17 THE COURT: You people know more about this  
18 than I do.

19 MR. HUFTALEN: He will testify that the two  
20 Scott air packs which are already in are devices used by  
21 firefighters in adverse environments when it's harsh to  
22 get out of a fire or a smoke or a chemical environment,  
23 and yes, he will testify that in his multiple years on  
24 the force, he's never seen one in a residence.

25 THE COURT: I'm going to permit him to testify

1 as to what they are and how they are used, but I don't  
2 think that his opinion of whether he's seen them in a  
3 private home or not is admissible.

4 MR. HUFTALEN: Okay. That's all right,  
5 thanks.

6 BEFORE THE JURY

7 THE CLERK: If the witness would please stand  
8 and raise your right hand.

9 AARON MCINTIRE

10 having been duly sworn, testified as follows:

11 THE CLERK: Please be seated. And for the  
12 record, if you'd please state your name and spell your  
13 name, and make sure you stay up close to the mic. Thank  
14 you.

15 THE WITNESS: My name is Aaron McIntire,  
16 A-a-r-o-n M-c-I-n-t-i-r-e.

17 THE COURT: Government.

18 MR. HUFTALEN: Thank you.

19 DIRECT EXAMINATION

20 BY MR. HUFTALEN:

21 Q. Could you please introduce yourself to the  
22 members of the jury, and by that I mean tell them who  
23 you are, where you work, and how long you've been doing  
24 what it is you do?

25 A. As I mentioned, my name is Aaron McIntire.

1 I'm battalion chief of the Concord Fire Department here  
2 in Concord, New Hampshire. I've been with the  
3 organization for 10 years. I've been in the fire  
4 service roughly 15 years.

5 Q. Sir, I'm going to show you what's marked and  
6 has been received as a full exhibit identified as  
7 Government Exhibit 31b as in boy. Could you take that  
8 and take a look at it for me, please.

9 A. (Witness examining exhibit.)

10 Q. Have you had a chance to look at it?

11 A. Yes.

12 Q. Let me hold this one up and represent to you  
13 that this is Government's Exhibit 31a. Other than some  
14 minor modifications or changes, are these virtually  
15 identical units?

16 A. Correct.

17 Q. What are they?

18 A. They're known as SCBA's, self-contained  
19 breathing apparatus.

20 Q. Okay. I'll take that off your lap.

21 A. Generally for firefighting purposes to allow  
22 us to enter into what is defined as IDLH atmosphere,  
23 immediately dangerous to life or health atmosphere,  
24 generally found within fire departments to allow us to  
25 do our work or in commercial industries where --



1 THE COURT: Sorry, wait for another question.

2 Go ahead.

3 Q. These are used by fire departments?

4 A. Yes.

5 Q. In hazardous environments?

6 A. Correct.

7 Q. Can you tell us approximately how much one of  
8 these things costs?

9 A. New, anywhere from \$3,000.

10 MR. HUFTALEN: Thank you. No further  
11 questions.

12 THE COURT: Thank you. Mr. Lange?

13 MR. LANGE: No, thank you.

14 THE COURT: Mr. Iacopino?

15 CROSS-EXAMINATION

16 BY MR. IACOPINO:

17 Q. Neither one of those tanks is a weapon, is it?

18 A. No.

19 MR. HUFTALEN: Nothing further. Thank you.

20 THE COURT: Thank you. You may step down.

21 MR. HUFTALEN: Daniel Tanner, your Honor.

22 THE CLERK: Please raise your right hand.

23 DANIEL TANNER

24 having been duly sworn, testified as follows:

25 THE CLERK: Please be seated. For the record,

1 if you'd please state your name and spell your name.

2 THE WITNESS: Daniel J. Tanner, T-a-n-n-er.

3 THE COURT: You may proceed, Mr. Huftalen.

4 MR. HUFTALEN: Thank you, your Honor.

5 DIRECT EXAMINATION

6 BY MR. HUFTALEN:

7 Q. Mr. Tanner, would you please tell the members  
8 of the jury what type of business you're involved in and  
9 where you work?

10 A. I work in Pleasant Hill, Oregon. I own  
11 Tannerite Explosives. And we manufacture explosives,  
12 fireworks, pyrotechnics, exploding targets.

13 Q. Do you manufacture a binary explosive compound  
14 known as Tannerite?

15 A. Yes, I do.

16 Q. Without disclosing any trade secrets, what is  
17 it?

18 A. It is a two-part explosive. It's intended to  
19 be shot with a rifle. And upon mixing the two  
20 components, it's a rifle bullet.

21 Q. The two separate components are, would it be  
22 fair to say, inert, as long as they are separate?

23 A. Correct.

24 Q. And can it be shipped through interstate  
25 commerce on standard common carriers such as UPS, FedEx?

1 A. Correct.

2 Q. When you mix the two together, what changes?

3 A. It becomes a high explosive.

4 Q. And how is it that your product is intended to  
5 be used?

6 A. As a shock indicator.

7 Q. Give us an example if you. I'm not sure we  
8 understand what a shot indicator is.

9 A. For long range shooting, 3, 400 yards, you can  
10 shoot it from a distance and see a visual, that you hit  
11 your target.

12 Q. How do you ship your product, how is it  
13 packaged?

14 A. Packaged in a 32 crush weight box. Has ORM-D.  
15 That's Other Regulated Material - Domestic.

16 Q. Dena, could you please pull up 7f-1. Mr.  
17 Tanner, I would like to direct your attention to the  
18 screen on your left. Do you recognize what's depicted  
19 in the middle of that picture there, in the middle of  
20 that paragraph, Mr. Tanner?

21 A. Yes, sir.

22 Q. What do you see it to be?

23 A. Looks like a half pound exploding target in a  
24 bag nailed to a tree.

25 Q. Now, it appears to have something that's

1 orange on it. What is that?

2 A. That appears to be the label that I have on  
3 the targets.

4 Q. Dena, could you pull up 7g-1, please. What do  
5 you see in that photograph, Mr. Tanner?

6 A. That appears to be an exploding target. Looks  
7 like a half-pounder nailed to a structure of some sort.

8 Q. Now if you look closely at that you can see  
9 Tannerite on the top of that orange label; right?

10 A. Correct.

11 Q. Is that a tradename for that product?

12 A. Yes, sir.

13 Q. There's a circle with a cross in the middle of  
14 it. What's that for?

15 A. That is the indicator, that's what you're  
16 supposed to aim for, the cross hairs.

17 Q. Now, you see how that's mounted?

18 A. Yes, I do.

19 Q. What's it in?

20 A. Excuse me?

21 Q. It's in a plastic bag; right?

22 A. Right.

23 Q. And how is the plastic bag mounted to whatever  
24 that surface is that it's mounted to?

25 A. Looks like two nails.

1 Q. Is that how you recommend mounting targets to  
2 be shot?

3 A. I haven't recommended that, no.

4 Q. Dena, could you pull up 7h-1, please. What do  
5 you see in that photograph, Mr. Tanner?

6 A. Looks like an exploding target, probably half-  
7 pound attached somehow to a tree.

8 Q. Dena, 7i-1, please. What do you see in that  
9 photograph?

10 A. A half-pound target attached somehow to a  
11 tree.

12 Q. Somehow. Can you see how it's attached by  
13 looking closely at it?

14 A. Yes, I do. With some nails.

15 Q. Also in a Ziploc bag?

16 A. Correct.

17 Q. Have each of what we've looked at been in a  
18 clear plastic bag that looks like a Ziploc bag?

19 A. Yes.

20 Q. Dena, 7j-1, please. What are we looking at,  
21 Mr. Tanner?

22 A. An exploding target nailed to the tree in a  
23 Ziploc bag.

24 Q. 7k-1, please, Dena. What are we looking at  
25 here?

1           A.    An exploding target nailed to a tree in a  
2   Ziploc bag.

3           Q.    Dena, 7d-1.  What do we see in 7d-1, Mr.  
4   Tanner?

5           A.    An exploding target nailed to a tree in a  
6   Ziploc bag.

7           Q.    Now, all of these pictures you've looked at so  
8   far, the material inside the plastic container looks to  
9   be dark gray?

10          A.    Correct.

11          Q.    Is that the color that you expect your product  
12   to take on when the two components are mixed?

13          A.    After they are mixed, correct.

14          Q.    Before they're mixed what color is your  
15   product?

16          A.    It's white.

17          Q.    Dena, could you please pull up 7c-1.  What are  
18   we looking at there behind that pine bough?

19          A.    Behind the pine bough?

20          Q.    What's in the middle of the picture that's  
21   orange?

22          A.    Exploding target in a Ziploc bag.

23          Q.    Is it Tannerite?

24          A.    It appears to be.

25          Q.    All right.  Dena, could you pull up 7a-2,

1 please. Now, Mr. Tanner, what are we looking at in  
2 7a-2?

3 A. It looks like -- I have to take careful  
4 counting of it, but --

5 Q. I don't need you to count the bottles. Just  
6 tell us what the product is that you see in the  
7 photograph?

8 A. Right. Tannerite exploding targets in mixed  
9 form.

10 Q. Now, some of the containers look like the ones  
11 we've just looked at and some of them are tall and  
12 skinny. What's the difference between those containers?

13 A. The -- we were in the process of changing the  
14 containers to facilitate easier mixing.

15 Q. In the process of changing. When did you  
16 change those, is that the summer of '07?

17 A. Approximately, yes, sir.

18 Q. Mr. Tanner, I'm going to show you what's  
19 marked -- well, it's up here as Government Exhibit 7a-4  
20 and 7a-3 and ask if you recognize those?

21 A. Yes, sir, they appear --

22 Q. Well, just do you recognize them?

23 A. Yes, sir.

24 Q. And what do they appear to be to you?

25 A. Some broken down boxes that were shipped to

1 Mr. Daniel Riley from Tannerite.

2 Q. From you; right?

3 A. Right.

4 Q. Can you tell us where they were shipped to  
5 based on a view of those boxes?

6 A. Cohoes, New York. I'm not sure --

7 Q. No, just -- I didn't mean to interrupt. I  
8 just want you to answer the questions that are posed.

9 A. Okay.

10 Q. Now, is your business a big business or is it  
11 fairly small?

12 A. I don't have any employees. I have three  
13 contract workers.

14 Q. All right. Do you do most of the  
15 record-keeping yourself?

16 A. I did. I have an assistant now.

17 Q. In June of 2007 did you handle orders over the  
18 telephone yourself?

19 A. Correct.

20 Q. Do you have a recollection or a memory as you  
21 sit here today of talking over the phone with an  
22 individual named Daniel or Danny Riley?

23 A. Yes, I do.

24 Q. And tell us what the substance of that  
25 conversation was?



1 MS. CLOUSER: Objection. Hearsay.

2 MR. HUFTALEN: 801(b)(2).

3 THE COURT: Let me see counsel.

4 AT SIDEBAR

5 THE COURT: Riley talked to him?

6 MR. HUFTALEN: About purchasing Tannerite.

7 THE COURT: Riley said?

8 MR. HUFTALEN: Riley said I want to buy

9 Tannerite.

10 THE COURT: Okay, now, is that hearsay?

11 MS. CLOUSER: Yes.

12 THE COURT: Why is that hearsay? Whether he  
13 really wanted to buy it or not, this fellow was going to  
14 ship it. Who cared whether Riley believed that he  
15 wanted to buy it, was fooling whether he wanted to buy  
16 it, or the truth of whether he wanted to buy it. This  
17 is like I go into a store and say I want a pencil. They  
18 give me a pencil. I may be lying. I don't have to --  
19 it isn't for the truth.

20 MS. CLOUSER: Well, it's my understanding that  
21 Riley had additional conversations regarding where he  
22 was at the time he was ordering Tannerite.

23 THE COURT: Okay, we haven't gotten up to  
24 that. How about the part we're talking about now. Are  
25 you objecting to that?

1 MS. CLOUSER: No.

2 THE COURT: All right, let's move on to the  
3 next statement. Is there another statement?

4 MR. HUFTALEN: Yeah, there are some e-mails as  
5 well as a telephone conversation between Mr. Riley and  
6 Mr. Tanner talking about purchasing the Tannerite which  
7 was later recovered at the Brown property.

8 THE COURT: Why isn't this a co-conspirator  
9 statement pursuant to in furtherance of the conspiracy?

10 MR. LANGE: I think some of it may be, your  
11 Honor, from Elaine Brown's perspective. My objection  
12 would go toward what I think they're also going to seek  
13 to offer which is that Riley's identifying himself as a  
14 supporter of the Browns and indicating that the Browns  
15 are tax protesters and so forth. That I don't think  
16 furthers the conspiracy.

17 THE COURT: Is there anything like that in  
18 there?

19 MS. CLOUSER: I would join that objection.

20 MR. HUFTALEN: With respect to the e-mails,  
21 no. There was a telephone conversation during which Mr.  
22 Riley spoke to Mr. Tanner and said I am at the Brown  
23 property. Mr. Tanner then asked -- or Mr. Riley said  
24 would you like to speak with him. Mr. Tanner then spoke  
25 to Mr. Brown. We do not intend to elicit statements

1 made by Mr. Brown during that conversation, nor do we  
2 intend to elicit statements that Mr. Riley was a  
3 supporter. We're steering clear of that.

4 THE COURT: Okay. Sounds fine, then.

5 BEFORE THE JURY

6 THE COURT: You may proceed.

7 MR. HUFTALEN: Thank you.

8 Q. BY MR. HUFTALEN: Mr. Tanner, I'm going to  
9 hand you what's marked for identification as  
10 Government's Exhibit 12. Without disclosing the  
11 contents of it, would you please take a look at it and  
12 then tell me if you recognize it?

13 A. Yes, sir.

14 Q. Again, without disclosing the contents, what  
15 is it?

16 A. It is my record-keeping. A page from my  
17 record logs.

18 Q. A record log. That's a log of orders you  
19 received?

20 A. Correct.

21 Q. Now, is that document a record that you kept  
22 as part of your regularly kept records in your business?

23 A. Correct.

24 Q. And was it your regular practice at that time  
25 to keep those records?

1           A.    Yes, it was.

2           Q.    And does that reflect a purchase of Tannerite  
3    by Mr. Riley?

4           A.    Yes, it does.

5                   MR. HUFTALEN: Your Honor, the government  
6    offers 12.

7                   THE COURT: Without objection.

8                   (Government's Exhibit 12 admitted.)

9           Q.    BY MR. HUFTALEN: Dena, could you please pull  
10   up Government Exhibit 12.

11                   Now, Mr. Tanner, I'd like you to look at the  
12   monitor on your left. The second entry from the bottom,  
13   can you tell us what that says?

14           A.    Dan Riley, 62 Younglove Avenue, 12047.

15           Q.    Then does it have a phone number?

16           A.    Yes. 518-470-7443.

17           Q.    Now way over in the far right-hand margin  
18   there appears to be a dollar sign and some numbers. Is  
19   that a dollar sign?

20           A.    Yes, it is, sir.

21           Q.    What does it say?

22           A.    \$397.

23           Q.    397 or 379?

24           A.    I'm sorry, 379.

25           Q.    And what does that mean, 379?

1           A.     That's the price for five cases of targets at  
2     the time.

3           Q.     Let me hand you what is marked as Government  
4     Exhibit 12g. Can you tell me what that is again without  
5     disclosing the contents?

6           A.     A money order.

7           Q.     I'm sorry, a money order?

8           A.     Or cashier's check -- yes, it's a money order.

9           Q.     Is that a copy of the money order that you  
10    received from someone in payment of Tannerite?

11          A.     Yes, sir.

12          Q.     From whom?

13          A.     From Dan Riley.

14          Q.     For the order you just testified about?

15          A.     Yes, sir.

16                 MR. HUFTALEN: Your Honor, I move Government  
17     Exhibit 12g.

18                 THE COURT: No objection? It's entered.

19                 (Government's Exhibit 12g admitted.)

20          Q.     BY MR. HUFTALEN: Now I'm handing you what's  
21     marked as Government's Exhibit 12d, 12e and 12f. Could  
22     you take a look at those three, and again, without  
23     disclosing the content, do you recognize them?

24          A.     Those are --

25          Q.     Well, just do you recognize them?

1 A. Yes, sir.

2 Q. What do you recognize them to be?

3 A. To be shipping labels.

4 Q. From whom?

5 A. From Tannerite Company.

6 Q. To whom?

7 A. To Mr. Dan Riley.

8 Q. Is that again relating to the order that  
9 you've already testified about?

10 A. Yes, sir.

11 MR. HUFTALEN: Your Honor, the government  
12 offers 12d, 12e and 12f.

13 THE COURT: If there's no objection, they are  
14 admitted.

15 (Government's Exhibits 12d, 12e and  
16 12f admitted.)

17 Q. BY MR. HUFTALEN: Now, these are UPS ground  
18 shipping labels; right?

19 A. Correct.

20 Q. Did you communicate with Mr. Riley about this  
21 order through e-mail?

22 A. I received an e-mail after shipping --

23 Q. Hang on, before you go on. Just answer this  
24 question. Did you communicate with Daniel Riley by  
25 e-mail about this order?

1 A. He was the one called in the order.

2 Q. Okay, I understand he called in, you spoke to  
3 him on the phone.

4 A. Right.

5 Q. After you spoke to him on the phone, did you  
6 have any communications with Dan Riley by e-mail?

7 A. Yes.

8 Q. Let me hand you what is marked as Government's  
9 Exhibit 12a for identification and ask if you recognize  
10 it?

11 A. Yes.

12 Q. Without disclosing any content, what is it?

13 A. It's an e-mail that I didn't understand who it  
14 was from at the time.

15 Q. When you received it, there was nothing in it  
16 that helped you understand who it was from?

17 A. No. Well, it said Dan Riley in the subject  
18 line.

19 Q. It said Dan Riley in the subject line?

20 A. Right.

21 Q. Did it appear that it came from an e-mail  
22 address attributable to Dan Riley?

23 A. I don't recognize that, no, sir.

24 Q. Did it come from an e-mail address that  
25 appeared to be Daniel Riley?

1 A. No.

2 Q. Okay. Let me hand you what's marked as 12b  
3 and ask you to take a look at that and tell me whether  
4 you've ever seen it before?

5 A. Yes, I have.

6 Q. What is it?

7 A. It is an e-mail regarding asking for a  
8 tracking number.

9 Q. And what's in the subject line of that e-mail?

10 A. Dan Riley.

11 Q. It says Dan Riley NY; right?

12 A. Correct.

13 Q. Did you understand from the e-mail address  
14 that appeared in the from line who was sending that to  
15 you?

16 A. No, sir.

17 Q. It didn't say Dan Riley at such and such;  
18 right?

19 A. No.

20 Q. Nor did Government Exhibit 12a; right?

21 A. No.

22 Q. No, it didn't?

23 A. No.

24 Q. Okay. So at that point you were a little bit  
25 befuddled, would it be clear to say, about who was



1 sending these to you?

2 A. Yes, sir.

3 Q. Let me hand you what's marked as Government's  
4 Exhibit 12c and ask you to take a look at that. Do you  
5 recognize it?

6 A. Yes, sir.

7 Q. What is it?

8 A. It's an e-mail from Dan Riley.

9 Q. From Dan Riley to who?

10 A. To me.

11 Q. Now, all three of those exhibits, 12c, 12b and  
12 12a, those are e-mails that you produced for this case;  
13 right?

14 A. Correct.

15 Q. When you got the third e-mail, 12c, did you  
16 have a better understanding of who was sending 12c, 12b  
17 and 12a?

18 A. I suppose so, sir.

19 Q. You suppose so, or yes, you did?

20 A. The -- well, it said the track number. I  
21 don't know what computer it came from or who it came  
22 from.

23 Q. 12c, read it to yourself, please.

24 A. Yes. Dan --

25 Q. No, no, no, no. Read it to yourself.

1 A. Oh, I'm sorry.

2 (Witness reading document.)

3 A. Yes, sir.

4 Q. Have you read it to yourself?

5 A. Yes.

6 Q. Now, after you received this e-mail, 12c, did  
7 you have a better understanding, based on the content as  
8 you read it, of who had sent you 12c, 12b and 12a?

9 A. Yes, sir.

10 Q. And did you have a conversation on the phone  
11 with Dan Riley?

12 A. I was called by him, yes.

13 Q. And during the conversation with Dan Riley did  
14 you better understand who had sent you these three  
15 e-mails?

16 A. Yes, sir.

17 Q. Who sent you these three e-mails?

18 A. Dan Riley.

19 Q. Did he tell you why his e-mail address didn't  
20 appear on these?

21 MS. CLOUSER: Objection.

22 MR. LANGE: Objection.

23 THE COURT: Basis?

24 MS. CLOUSER: Hearsay.

25 THE COURT: Overruled.

1 Q. Did he tell you why his e-mail address didn't  
2 appear on these e-mails?

3 A. No, sir.

4 Q. Let me hand you 12c again and ask you to read  
5 it to yourself one more time.

6 A. Okay.

7 (Witness reading exhibit.)

8 A. Okay, sir.

9 Q. Did Dan Riley say anything to you in the  
10 telephone conversation or in this e-mail that helped you  
11 understand why it didn't have Dan Riley's e-mail address  
12 on the e-mails 12a, 12b and 12c?

13 A. I -- I'm not sure what to say, sir.

14 Q. Okay. I apologize, it's got to be me. Read  
15 the first sentence to yourself.

16 A. Okay.

17 Q. Starting here. Don't read it out loud.

18 A. Oh, okay.

19 Q. Pay particular attention to these words here.  
20 This one, this one, this one and this one and this one  
21 and this one and this one.

22 A. All right, I couldn't read this here, I'm  
23 sorry.

24 Q. Oh, I'm sorry, do you need glasses?

25 A. No, I don't.

1 Q. Okay, have you had an opportunity to clearly  
2 read that now?

3 A. Yes.

4 Q. Now, who sent you these e-mails?

5 A. Yes, Mr. Riley.

6 Q. Why doesn't his e-mail address appear on them?

7 MR. LANGE: Objection.

8 Q. Did he tell you why his e-mail doesn't --

9 MR. LANGE: Objection.

10 Q. I'm sorry.

11 MR. LANGE: This witness is speaking of  
12 personal knowledge. The government is trying to slide  
13 the e-mail into evidence.

14 THE COURT: Overruled. Go ahead.

15 A. He was using a different computer.

16 Q. Did he tell you where he was when he was  
17 sending this e-mail 12c?

18 MR. LANGE: Objection.

19 MS. CLOUSER: Objection.

20 THE COURT: Overruled.

21 A. Yes.

22 Q. Where was he?

23 A. At Mr. Brown's location.

24 MR. HUFTALEN: I offer 12a, 12b, 12c.

25 MR. LANGE: Can we have a sidebar on this?

1 THE COURT: Of course.

2 AT SIDEBAR

3 THE COURT: Okay, now, Exhibit 12a, what is  
4 it? What is this e-mail? I don't see anything in it  
5 other than a bit of a rant on the bottom, but I don't  
6 know the relevance of it.

7 MR. HUFTALEN: I'm offering it to show that  
8 Mr. Tanner had multiple e-mail communications with Mr.  
9 Riley.

10 MR. LANGE: That's already in evidence.

11 THE COURT: How about b, 12b.

12 MR. HUFTALEN: Likewise.

13 THE COURT: Defendants object to 12a or 12b?

14 MR. LANGE: I don't think it adds anything to  
15 the government's case --

16 THE COURT: You object?

17 MR. LANGE: I object.

18 THE COURT: Basis?

19 MR. LANGE: It is an out of court statement  
20 and I object on that ground.

21 MS. CLOUSER: And it's already in evidence.

22 THE COURT: It's already in evidence?

23 MS. CLOUSER: The fact that there's multiple  
24 communications with Dan Riley is already in evidence so  
25 it's unnecessarily duplicative.

1 THE COURT: I don't think 12 -- thank you --  
2 12a or 12b add anything here. He's already testified  
3 that he's had communications with them.

4 12c. Is anyone objecting to this?

5 MR. LANGE: I don't object.

6 THE COURT: No one objects. There you go.  
7 Okay. Good. 12c is in without objection. 12a and b  
8 are out.

9 MR. HUFTALEN: Thank you.

10 BEFORE THE JURY

11 THE COURT: 12c without objection.

12 (Government's Exhibit 12c admitted.)

13 Q. BY MR. HUFTALEN: Mr. Tanner, I'm handing you  
14 now what's in, 12c. The first line of that, let me read  
15 it to you. Dan -- is that to you?

16 A. Yes, sir.

17 THE COURT: Keep your voice up, Mr. Tanner.

18 A. Yes, sir.

19 Q. Dan, I was staying at the Browns at the time  
20 so I used Reno's e-mail to contact you. Right?

21 A. Right.

22 Q. Would that explain who sent 12a and 12b? Does  
23 that help you understand --

24 A. I don't know Reno.

25 Q. And then Mr. Riley goes on and says a couple

1 of other things to you; right?

2 A. Correct.

3 Q. Later in the e-mail it says if you haven't  
4 shipped it, don't exclamation point exclamation point.

5 Did you know what he was talking about?

6 A. At that point, no, as to why.

7 Q. Okay, let's read the whole thing. The  
8 sentence before that says, the feds knew I was waiting  
9 on an item that was coming in what, and it looks like an  
10 exclamation point or I, they just asked me and I told  
11 them Tannerite period. If you haven't shipped it, don't  
12 exclamation point.

13 Now, having heard the sentence before it, what  
14 did you understand if you haven't shipped it, don't, was  
15 referring to?

16 A. Don't ship the shipment.

17 Q. Of Tannerite; right?

18 A. Correct.

19 Q. Thank you. You had already shipped it; right?

20 A. Correct.

21 Q. Mr. Tanner, let me ask you this. If you take  
22 a half-pound container of your mixed exploding binary  
23 explosive compound and you shoot at it with a  
24 high-powered rifle from 20 feet away, what's going to  
25 happen?

1 A. It's going to explode when you hit it.

2 Q. And what's going to happen to it?

3 A. It's going to detonate. It's called a high  
4 order explosive.

5 Q. Would there be a concussive force that  
6 emanates from it?

7 A. Yes, sir.

8 Q. Will the plastic cap that's on top fragment  
9 and become projectiles?

10 A. Yes, sir.

11 Q. If it's nailed to a tree with ten penny nails  
12 or big nails, what's going to happen to those nails?

13 MR. LANGE: Objection.

14 THE COURT: Basis?

15 MR. LANGE: Foundation.

16 THE COURT: Lay a foundation. Lay a  
17 foundation that he knows what happens when --

18 Q. Do you know what happens when Tannerite  
19 explodes?

20 A. Yes, sir.

21 Q. Tell us what happens when a half-pound  
22 container of Tannerite explodes?

23 A. When it detonates the molecular break down,  
24 the molecules separate and break the sound barrier and  
25 produces an audible bang.



1 Q. And does it create a concussive force outward  
2 from the point of impact?

3 A. Yes, sir.

4 Q. And have you seen it distribute material that  
5 was part of the container outward in that concussive  
6 force?

7 A. Yes, sir.

8 Q. And have you seen it distribute other material  
9 that was next to it in that concussive force?

10 A. Yes, sir.

11 Q. Now let me ask you, if you take a half-pound  
12 can or plastic container, put it in a Ziploc bag and  
13 nail it to the tree with two large nails, in your  
14 professional opinion, being the owner of binary or  
15 Tannerite, can you tell us what's going to happen to  
16 those two nails?

17 A. They are going to take flight.

18 Q. At supersonic speed perhaps?

19 MR. LANGE: Objection, leading.

20 THE COURT: That's leading.

21 Q. How fast will they go?

22 MR. LANGE: If he knows.

23 THE COURT: If you know.

24 A. Fast.

25 Q. What was the answer, fast?

1 A. Fast.

2 Q. Okay. Good. What about the tree bark that's  
3 right behind it. What's going to happen to the tree  
4 bark?

5 A. It's going to be blown off the tree.

6 Q. Now, you saw a picture of one that was mounted  
7 on what appeared to be gray wood, 7g-1. Could you bring  
8 that up, Dena. As that is positioned right now, do you  
9 see nails at the top of it?

10 A. Yes, sir.

11 Q. If you were to fire a high-powered rifle and  
12 cause that to detonate, in your opinion, what would  
13 happen to those nails?

14 A. They would take flight, sir.

15 Q. And what would happen to the wood that the  
16 nails are in?

17 A. It would blow up.

18 Q. And go fly away fast as you say; right?

19 A. Correct.

20 Q. Would you want to be within 20 feet of that  
21 when someone detonates it?

22 MR. LANGE: Objection.

23 THE COURT: Sustained.

24 A. No, sir.

25 THE COURT: Jury disregard. Ask another

1 question.

2 Q. When you sell this product, do you recommend  
3 to people get within a certain distance or stay a  
4 certain distance away from this product when it's going  
5 to detonate or explode?

6 A. Yes, sir.

7 Q. How far away do you tell people to be?

8 A. About a hundred yards.

9 Q. A hundred yards?

10 A. Right.

11 Q. Mr. Tanner, when you ship Tannerite, you ship  
12 an instructional DVD along with it; right?

13 A. Yes.

14 Q. Yes? Did you ship an instructional DVD along  
15 with the Tannerite you sent to Dan Riley?

16 A. Yes.

17 MR. HUFTALEN: Your Honor, we have marked as  
18 7a-1a, one of the instruction -- Tannerite instruction  
19 videos. I've spoken with opposing counsel about  
20 offering it. My understanding is there's no objection.

21 THE COURT: All right, you're offering it?

22 MR. HUFTALEN: Yes.

23 THE COURT: No objection, it's admitted.

24 (Government's Exhibit 7a-1a  
25 admitted.)

1                   MR. HUFTALEN: I'd like to play it. I'm not  
2 going to play the whole thing, it's 17 minutes long, but  
3 I'd like to play it at this point and ask Mr. Tanner a  
4 couple questions.

5                   THE COURT: No objection, you may proceed.  
6 Just a second. 7a-1a is what you said?

7                   MR. HUFTALEN: 7a hyphen 1a.

8                   (Video being played.)

9                   Q. What did we just see?

10                  A. A charge of Tannerite being shot with a rifle.

11                  Q. Do you know how far away that is?

12                  A. That film taken -- yes and no. I'm trying to  
13 answer correctly. I don't know exactly how far. It was  
14 like probably 80 yards.

15                  Q. That's fine. Dena, please play.

16                  (Video being played.)

17                  Q. Stop it right there. How much Tannerite --  
18 well, excuse me, what did we just see?

19                  A. A person shooting a charge at Tannerite  
20 targets.

21                  Q. Do you know how much Tannerite we just saw  
22 explode?

23                  A. A half a pound.

24                  Q. Play it, Dena.

25                  (Video being playing.)

1 Q. This is you; right?

2 A. Ten years ago, yes.

3 (Video being played.)

4 Q. Can you tell us what you're doing in the  
5 video?

6 A. Yeah, I'm explaining how to mix the targets.

7 Q. So you take part A and you dump part B into  
8 it?

9 A. Yes, sir.

10 Q. And then you shake it like that?

11 A. Right.

12 Q. To distribute part B?

13 A. Right.

14 (Video being played.)

15 Q. Other than what we saw you do, is there  
16 anything you have to do to this product to make it ready  
17 to be exploded by a bullet?

18 A. No, sir.

19 Q. Okay. Dena play, please.

20 (Video being played.)

21 Q. Is that you?

22 A. Yes, sir.

23 Q. What caliber is that rifle you're firing?

24 A. 556.

25 THE COURT: What did you say?

1 A. 556.

2 THE COURT: 556.

3 A. Yes, caliber.

4 Q. Which means what?

5 A. 223.

6 Q. A 223 round?

7 A. (Nods head affirmatively.)

8 Q. Please play.

9 (Video being played.)

10 Q. Now, this shows a person mixing it in the  
11 field; right?

12 A. Correct.

13 (Video being played.)

14 Q. Can you pause that. The person is using a  
15 plastic spoon to mix it; right?

16 A. Yes.

17 Q. I'm going to hand you what's marked as  
18 Government's Exhibit 7b-2 which is a box that has a  
19 number of items inside. I'm going to hand one of them  
20 to you and ask you to take a look and tell me what's in  
21 that plastic bag.

22 A. That's a mixing spoon, 5 cc.

23 Q. What else? There are two items in there.

24 A. And there is a lid to the targets.

25 Q. Lid to Tannerite?

1 A. Yes, sir.

2 Q. Do you send these spoons with the material you  
3 ship?

4 A. Yes, sir.

5 Q. Dena, could you play that, please.

6 (Video being played.)

7 Q. Would you pause that. Now I'm going to hand  
8 you another bag with the same Government's Exhibit 7b-2.  
9 It has something yellow in that. What's that?

10 A. That is the funnel.

11 Q. Do you ship funnels with the Tannerite as  
12 well?

13 A. I did, yes.

14 Q. Like the funnel that's in the video right now?

15 A. Correct.

16 Q. Now why did you ship funnels before but you  
17 don't know?

18 A. It makes it easier to funnel into the small  
19 neck bottles.

20 Q. But you don't use the small neck bottles  
21 anymore?

22 A. Right.

23 Q. You use all bigger bottles?

24 A. Correct.

25 Q. Or wider neck bottles?

1 A. Correct.

2 Q. Dena, play it, please.

3 (Video being played.)

4 Q. While that's playing let me hand you one more  
5 plastic bag that comes out of Government's Exhibit 7b-2  
6 and ask you to tell us what's in that bag?

7 A. That's a mixing container.

8 Q. Can you pause that, Dena. That's what?

9 A. A mixing container.

10 Q. Mixing container for Tannerite?

11 A. Right.

12 Q. Is that the size container you would leave it  
13 in to shoot or would you put it in a smaller one?

14 A. No, you'd put it in a smaller one.

15 Q. Let me hand you a smaller one that happens to  
16 be in the same exhibit, 7b-2. Can you tell us what that  
17 smaller container is?

18 A. That's the half-pound charge, exploding  
19 charge.

20 Q. Now, is that what we saw blowing up in the  
21 video earlier?

22 A. Yes, sir.

23 Q. Thank you. Play the next.

24 (Video being played.)

25 Q. Would you pause that. Mr. Tanner, what are



1     you demonstrating in that portion of the video?

2             A.     Showing that every firing rifle isn't capable  
3     of setting it off.

4             Q.     I'm holding up Government Exhibit 5d. Do you  
5     know what this thing is?

6             A.     It appears to be a .50-caliber.

7             Q.     Would a round from this set it off?

8             A.     Certainly.

9             Q.     How about what I'm holding up now, which is  
10    Government Exhibit 5h which has been identified as a  
11    308. Would this set it off?

12            A.     A 308 will, yes, sir.

13            Q.     Would a 223 round set it off?

14            A.     Yes, sir.

15            Q.     Play the video, please.

16                    (Video being played.)

17            Q.     Actually stop the video.

18                    MR. HUFTALEN: I have no further questions at  
19    this point, your Honor.

20                    THE COURT: Thank you. Take the video off,  
21    thank you. Mr. Lange?

22                    MR. LANGE: I have no questions, thank you.

23                    THE COURT: Mr. Iacopino? All right, Ms.  
24    Clouser?

25                    MS. CLOUSER: Just one moment, your Honor.

1 THE COURT: Take your time.

2 MS. CLOUSER: Your Honor, if I could ask the  
3 government to continue to play the video that was just  
4 playing, and in fact from the spot that was left off is  
5 fine.

6 (Video being played.)

7 MS. CLOUSER: Thank you.

8 CROSS-EXAMINATION

9 BY MS. CLOUSER:

10 Q. Good afternoon. We just watched a portion of  
11 the instructional DVD video that you send out with your  
12 product; correct?

13 A. Correct.

14 Q. And in that portion you talk about how safe  
15 your product is when used properly; correct?

16 A. Correct.

17 Q. When the products are mixed together, you can  
18 shake it as much as you want and it won't set it off;  
19 correct?

20 A. Yes.

21 Q. And we saw in the video a blowtorch being held  
22 against the mixed compounds; correct?

23 A. Yes.

24 Q. And it didn't go off?

25 A. Correct.

1 Q. Same thing with the fuse; correct?

2 A. Yes.

3 Q. And in fact, you invented the Tannerite as a  
4 smoke and noise indicator for long-range shooting;  
5 right?

6 A. Correct.

7 Q. And some of what we saw on the video when you  
8 set the Tannerite off with a high-powered rifle, that  
9 isn't a flame that's set off; correct?

10 A. Correct.

11 Q. It's actually water vapor; right?

12 A. Largely, yes.

13 Q. And a loud noise?

14 A. Correct.

15 Q. In fact, some people call this the Hollywood  
16 effect; right?

17 A. Some people have, yes.

18 Q. Have you heard Tannerite described as the  
19 Hollywood effect?

20 A. Probably so. I probably describe it myself  
21 that way sometimes.

22 Q. And that's because of the water vapor that's  
23 deployed and the loud noise that's deployed when it's  
24 set off?

25 A. The visual, yes.

1           Q.    You recall the government asked you about that  
2   yellow warning label that's on the cans of the  
3   Tannerite?

4           A.    A yellow label?

5           Q.    I'm sorry, the orange label?

6           A.    (Nods head affirmatively.)

7           Q.    And that's where you warn people to stay a  
8   hundred yards away?

9           A.    Yes.

10          Q.    And there's no warning on that label with  
11   respect to exploding Tannerite throwing debris or  
12   anything like that; right?

13          A.    Right.

14          Q.    There's no warning on that label about not  
15   affixing Tannerite with nails nearby; correct?

16          A.    Well, not on the label, no.

17          Q.    And you don't talk about throwing debris or  
18   anything like that in the DVD instructional video; do  
19   you?

20          A.    I think there is. I would have to watch it.

21          Q.    And it's not unlawful to have Tannerite;  
22   correct?

23          A.    No, it's not unlawful.

24          Q.    Do you recall the government showing you some  
25   shipping labels with respect to Tannerite you shipped to

1 a Mr. Riley?

2 A. Yes.

3 Q. And you shipped that to Cohoes, New York;  
4 right?

5 A. Yeah.

6 Q. In fact, every single one of those shipping  
7 labels was to New York?

8 A. Yes.

9 Q. You never shipped any Tannerite to New  
10 Hampshire?

11 A. I ship every day to New Hampshire.

12 Q. Excuse me --

13 A. I ship it --

14 Q. You never --

15 THE COURT: Wait a second. Let him finish his  
16 answer. Go ahead.

17 A. I ship every day to New Hampshire.

18 Q. You never shipped any Tannerite to Danny Riley  
19 in New Hampshire; correct?

20 A. No.

21 MS. CLOUSER: I have no further questions.  
22 Thank you.

23 THE COURT: Thank you very much. Government?

24 REDIRECT EXAMINATION

25 BY MR. HUFTALEN:

1           Q.    Ms. Clouser asked you a lot of things that  
2    your label and DVD don't say.  Do they say don't mount  
3    it to a tree and shoot when deputy marshals come walking  
4    through?

5               MR. LANGE:  Objection.

6               THE COURT:  Sustained.

7               MR. HUFTALEN:  No questions.

8               THE COURT:  Thank you very much.  You can step  
9    down.  You're done, thank you.

10              MR. HUFTALEN:  Is the witness excused from his  
11   appearance?

12              THE COURT:  Hearing no objection, he's  
13   excused.  Thank you, Mr. Tanner.

14              MS. OLLILA:  The United States calls Cathy  
15   Smith.

16              THE CLERK:  Please raise your right hand.

17                               CATHY SMITH

18              having been duly sworn, testified as follows:

19              THE CLERK:  Please be seated.  And for the  
20   record, if you'd please state your name and spell your  
21   name.

22              THE WITNESS:  Cathy Smith.  C-a-t-h-y  
23   S-m-i-t-h.

24                               DIRECT EXAMINATION

25   BY MS. OLLILA:

1 Q. Good afternoon, Ms. Smith. How are you  
2 employed?

3 A. I'm employed with the Internal Revenue Service  
4 Criminal Investigation.

5 Q. How long have you been with the Internal  
6 Revenue Service Criminal Investigation?

7 A. About 13 and a half years.

8 Q. Were you so employed in October 2007?

9 A. Yes.

10 Q. Did you travel to 401 Center of Town Road in  
11 October, in late October 2007?

12 A. Yes, I did.

13 Q. Why?

14 A. We were installing an alarm system at the  
15 property and I was up there, I'm the supervisor for New  
16 Hampshire.

17 Q. Why was an alarm system being installed at 401  
18 Center of Town Road?

19 A. To protect the property from being broken into  
20 or any damage occurring.

21 Q. Do you recall the specific date that you were  
22 there in October 2007?

23 A. It was October 27, 2007.

24 Q. Were you there alone?

25 A. No, I was not.

1 Q. Who was there with you?

2 A. Several special agents with IRS as well as two  
3 alarm guys from Ideal Security.

4 Q. Had you hired the alarm guys from Ideal  
5 Security?

6 A. Not me specifically but through a  
7 representative.

8 Q. And were they there to install the alarm  
9 system at the residence?

10 A. Yes, they were.

11 Q. Did you let them into the residence?

12 A. Yes.

13 Q. Where did they proceed?

14 A. Well, they were throughout the residence but  
15 they -- on the first, second, third floors.

16 Q. Did you travel with them in the residence, Ms.  
17 Smith?

18 A. Not me specifically but there was always an  
19 agent with them.

20 Q. Let me show you -- actually, Dena, please pull  
21 up 30a-40.

22 Ms. Smith, I direct your attention to the  
23 monitor on your left. Do you recognize what this is a  
24 photograph of?

25 A. Yes.



1 Q. What is it a photograph of?

2 A. This is in the second floor master bedroom.  
3 It was a little room that held a safe.

4 Q. Now, to the left of the photo there appears to  
5 be some wood. Is that correct?

6 A. Yes, that's correct.

7 Q. What is that?

8 A. That was an open elevator shaft, so it was  
9 just the shaft of an elevator. The elevator hadn't been  
10 installed in it.

11 Q. Were the installation crew working in that  
12 elevator shaft?

13 A. Yes.

14 Q. Why were they working in that elevator shaft?

15 A. They were trying to run some wires for the  
16 alarm system through the upper ceiling on the second  
17 floor.

18 Q. Let me show you what's marked as Government's  
19 Exhibit 20 for identification and 21 for identification.  
20 Do you recognize what these exhibits are?

21 A. Yes, I do.

22 Q. What are they of?

23 A. This is the inside of the elevator shaft. If  
24 you're facing the inside of the elevator shaft up on the  
25 right-hand side, this is the paneling up on the side.

1 Q. Who took those photographs?

2 A. One of the agents that day.

3 Q. Are these photographs a fair and accurate  
4 depiction of the way that paneling looked on that day  
5 you were at the residence?

6 A. Yes, it is.

7 MS. OLLILA: Your Honor, the United States  
8 moves to admit Government's Exhibit 20 and 21.

9 THE COURT: Hearing no objection, admitted  
10 without objection.

11 (Government's Exhibits 20 and 21  
12 admitted.)

13 Q. BY MS. OLLILA: Dena, please pull up 21. Now,  
14 at some point in time while the alarm installation crew  
15 was working in the elevator shaft, were you called to  
16 the elevator shaft?

17 A. Yes, I was.

18 Q. Why were you called to the elevator shaft?

19 MR. LANGE: May we approach, your Honor.

20 AT SIDEBAR

21 MR. LANGE: Your Honor, maybe I'm getting a  
22 little bit ahead here, but I think where the government  
23 is going is they are going to seek to offer what the  
24 agent or what the security people found, which was over  
25 a hundred thousand dollars' worth of currency and gold.

1 My objection is based on Rule 403 to the extent that  
2 they may be probative of something, like the fact that  
3 the defendants had a financial ability to pay taxes,  
4 that probative value is substantially outweighed by the  
5 prejudice. The average person would find it highly  
6 incriminating that someone was keeping that quantity of  
7 cash in their own home.

8 MS. CLOUSER: I join in the objection.

9 MS. OLLILA: This has nothing to do with  
10 whether or not they had the ability to pay taxes. It  
11 has to do with the fact that they had the ability to  
12 remain at their residence for nine months and purchase  
13 weapons through their co-conspirators and maintain an  
14 existence during nine months and beyond nine months,  
15 your Honor.

16 THE COURT: All right, let me see if I  
17 understand what's going on here. The government's  
18 position was that they were going to try to hold out  
19 indefinitely, and the government's position is the  
20 defendants intended to hold out indefinitely, or resist  
21 in case they were arrested. The government's attempting  
22 to show that they had the resources there to hold out  
23 indefinitely because people were being permitted to go  
24 in and out of the property during some period of time,  
25 therefore they were going to finance this with the --

1 with these funds, is that it?

2 MR. LANGE: That's correct, your Honor.

3 THE COURT: Your position is that may be true,  
4 but the prejudice would outweigh any relevance.

5 MR. LANGE: Significantly outweigh any  
6 probative value, that's my argument, it's a 403  
7 argument.

8 THE COURT: I understand.

9 MR. LANGE: That's it.

10 THE COURT: I agree with the defense. It's  
11 out.

12 MS. OLLILA: Thank you. Your Honor --

13 THE COURT: Whoa, whoa. He wants to leave  
14 before I change my mind.

15 MS. OLLILA: Then the United States has no  
16 more questions for this witness.

17 THE COURT: Good. Does defense have any  
18 questions?

19 MR. LANGE: No.

20 THE COURT: No questions? Okay, very good.

21 BEFORE THE JURY

22 THE COURT: Okay, Ms. Smith, we're all done,  
23 thank you, you may step down.

24 MS. OLLILA: Your Honor, I just have one more  
25 question.

1 THE COURT: Oh, you do have a question, okay.

2 Q. BY MS. OLLILA: Ms. Smith, the alarm was put  
3 in to that residence in order to protect the property;  
4 is that correct?

5 A. Correct.

6 Q. And how long did it take approximately for the  
7 alarm installation crew to put that monitoring device  
8 in, the alarm in?

9 A. I'm going to say at least that day. We may  
10 have come back the following day, I'm not positive  
11 honestly.

12 MS. OLLILA: We have no further questions,  
13 your Honor.

14 THE COURT: Defense have questions?

15 MR. LANGE: No.

16 MS. CLOUSER: No.

17 THE COURT: No questions. Very good, please  
18 step down.

19 MS. OLLILA: The United States calls Deputy  
20 Marshal Jamie Berry.

21 THE COURT: Jamie Berry, okay.

22 MS. OLLILA: Your Honor, we need to approach  
23 for this witness.

24 THE COURT: Okay.

25 AT SIDEBAR

1 THE COURT: Counsel.

2 MS. OLLILA: Your Honor, I suspect that I know  
3 what your Honor's position is on this, however, counsel  
4 does not object to the following testimony coming in.  
5 We are approaching, your Honor, in order to notify you  
6 that Jamie Berry went to the residence after the initial  
7 arrest --

8 THE COURT: Yes.

9 MS. OLLILA: -- in order to assist probation  
10 with the location and seizure of the weapons. He is not  
11 going to testify in any way about those weapons.  
12 However, consistent with the assent of counsel, he is  
13 going to testify that the safe was open in the master  
14 bedroom, and in the safe was an amount of U.S. currency.  
15 He doesn't know how much there was, but there was an  
16 amount of U.S. currency. Counsel does not object to  
17 that coming in.

18 THE COURT: Fine. They didn't object to the  
19 currency in the nightstand either.

20 MS. OLLILA: Correct.

21 THE COURT: Fine.

22 MS. OLLILA: Thank you.

23 THE CLERK: Please raise your right hand.

24 JAMIE BERRY

25 having been duly sworn, testified as follows:

1                   THE CLERK: Please be seated. And for the  
2 record, if you'd please state your name and spell your  
3 your name.

4                   THE WITNESS: Jamie Berry, B-e-r-r-y.

5                   DIRECT EXAMINATION

6 BY MS. OLLILA:

7           Q. Sir, how are you employed?

8           A. As a Deputy U.S. Marshal.

9           Q. How long have you been a Deputy U.S. Marshal?

10          A. Approximately six years now.

11          Q. And what did you do prior to being employed as  
12 a Deputy U.S. Marshal?

13          A. I was in the United States Army for ten years.

14          Q. What did you do in the Army?

15          A. Served as a military policeman and an  
16 investigator for five of those years.

17          Q. Did you have any special skills with respect  
18 to your service in the Army?

19          A. Yes. I was also attached as a system  
20 administrator for the various MP stations where I  
21 worked.

22          Q. What does that mean to be a system  
23 administrator?

24          A. Locally I would take care of servers,  
25 Microsoft exchange servers. I once had a unit server

1 for a database, things of that nature.

2 Q. What do you mean by taking care of the  
3 servers, the systems?

4 A. I maintained them, routine updates, anything  
5 of that nature.

6 Q. Do you have specialized training with respect  
7 to computer software or hardware?

8 A. Yes. I have an associate's degree through  
9 Grantham University in software engineering, also  
10 attended various training in computer forensics, things  
11 of that nature.

12 Q. What types of training in the way of computer  
13 forensics, Mr. Berry?

14 A. Seizure of electronic evidence. Also the  
15 acquisition of electronic evidence off a hard drive and  
16 analysis of that hard drive.

17 Q. Are there certain protocols that you have to  
18 comply with in order to obtain documents off of  
19 computers?

20 A. Yes.

21 Q. And what would they be, for example?

22 A. Protocols as in --

23 Q. How you would attain them, how you would then  
24 maintain that evidence?

25 A. How would I maintain it afterwards?



1 Q. Yes.

2 A. Okay, after you found the documentation  
3 possibly on a hard drive you would basically document  
4 that, you know, keep notes on it, where you obtained it  
5 from, locations, things of that nature.

6 Q. How would you gain access to records on a  
7 computer, Deputy Berry?

8 A. You would do it -- you would need a data, like  
9 a data block so you didn't disturb the hard drive. You  
10 would have a specialized device where I could hook it  
11 from one hard drive to the other, and it will pull the  
12 data over, it will make a bit by bit copy of that hard  
13 drive.

14 Q. When you search computer records, do you do so  
15 first by obtaining a search warrant for those records?

16 A. Yes.

17 Q. Now, in May of 2006 did you assist members of  
18 the U.S. Probation Office?

19 A. Yes.

20 Q. Did you assist them with going to the  
21 residence known as 401 Center of Town Road?

22 A. Yes.

23 Q. Were you alone when you went there with  
24 members of the U.S. Probation Office?

25 A. No.

1 Q. Who else was there?

2 A. It was myself, Deputy U.S. Marshal Ken Nunes,  
3 Deputy U.S. Marshal Jeff White, Deputy U.S. Marshal  
4 Leigh Marchegiana, I'm not sure of the spelling of the  
5 last name, and Deputy Marshal Doug Bartlett.

6 Q. Did you enter the residence before members of  
7 the probation office arrived?

8 A. No.

9 Q. Did anyone arrive with members of the  
10 probation office. When I say anyone, I mean either  
11 defendant Edward Brown or defendant Elaine Brown?

12 A. Elaine Brown arrived.

13 Q. Is that when you went into the residence?

14 A. Yes.

15 Q. Who showed you around the residence?

16 A. Elaine Brown.

17 Q. At some point in time were you brought up to  
18 the master bedroom area?

19 A. Yes.

20 Q. Was there a safe in the master bedroom area?

21 A. Yes.

22 Q. Did someone open the safe?

23 A. Yes. Elaine Brown did.

24 Q. Did she open it by using the combination lock?

25 A. Yes.

1           Q.    Now, I'm going to lead you on this.  Was there  
2   currency in that safe?

3           A.    Yes, there was.

4           Q.    Where was it located in the safe?

5           A.    Bottom left-hand side of the safe.

6           Q.    What did it look like?

7           A.    There was bags of coins and then there was a,  
8   the only way I can describe it is a shrink, like a  
9   shrink wrapped cube of money.

10          Q.    You say shrink wrapped cube of money.  I want  
11   you to describe it by identifying how many inches it was  
12   in length and how many inches it was in height.

13          A.    I just remember pretty much a cube.  I don't  
14   know how far back it went because we didn't go in and  
15   grab it or pull it out and look at it.  I remember  
16   seeing a cube.

17          Q.    Looks like you are motioning with your hands  
18   approximately 12 inches wide by 12 inches high; is that  
19   correct?

20          A.    Probably approximately.  I really can't  
21   remember the exact dimensions.

22          Q.    Did you touch that money?

23          A.    No.

24          Q.    Was it left at the residence?

25          A.    Yes.

1 Q. Now, at some point in time, Deputy Berry, did  
2 you have meetings with members from your office about  
3 the apprehension of defendants Edward and Elaine Brown?

4 A. Yes, I did.

5 Q. Was there a plan to apprehend defendants  
6 Edward and Elaine Brown?

7 A. I wasn't privy to any plans. I know there was  
8 the expectation of arresting them, yes.

9 Q. What was your role going to be?

10 A. My role, I assisted operationally and on  
11 surveillance, and I also did -- conducted electronic  
12 surveillance online for open source information.

13 Q. All right, what does that mean you conducted  
14 electronic surveillance for open source information?

15 A. Open source information is information readily  
16 available on the Internet to anybody in the public.  
17 Initially this group posted a lot of information --

18 Q. What group?

19 A. Various members, supporters of Ed and Elaine  
20 Brown posted this information, videos, blogs, things of  
21 that nature.

22 Q. And what was your job with respect to  
23 monitoring those blogs or looking at them?

24 A. I monitored them daily and storing any  
25 information that may be pertinent to either maybe a

1 possible threat or further prosecution in the future.

2 Q. You indicated that you would monitor the blogs  
3 and the Internet for open source information; is that  
4 correct?

5 A. Yes.

6 Q. Can you explain that further?

7 A. Just monitoring. We identified early on  
8 specific web sites that were holding content in  
9 reference to the defendants, and we -- we just  
10 consistently logged on to those web sites just simply  
11 through a browser, information would be posted, and I  
12 just gather that information and save it.

13 Q. When you would log on to the web site through  
14 a browser, what type of browser would you use?

15 A. Initially we used Internet Explorer 6 and we  
16 had a few issues where we were -- there was an  
17 individual that was able to monitor what we were looking  
18 at and could monitor what computer was logging on, so we  
19 then started using Firefox where we could disguise  
20 ourselves a little better.

21 Q. When you say we, do you mean you?

22 A. Yes, I initially did all the setups and we had  
23 I believe it was six laptops that was set up to do this  
24 and distributed variously through the deputies that was  
25 working on this.

1           Q.    Let me show you what's marked as Government's  
2   Exhibit 1h for identification. Do you recognize what  
3   that is a photograph of?

4           A.    Yes.

5           Q.    What is it?

6           A.    It's a photograph of Jason Gerhard, Cirino  
7   Gonzalez, Edward Brown, individual by the first name of  
8   Luke, we don't know the last name.

9           Q.    How did you come into possession of this  
10   photograph?

11          A.    While monitoring web sites certain supporters  
12   had MySpace accounts, and I was monitoring specific  
13   MySpace accounts. This one was Jason Gerhard's.

14          Q.    You were monitoring Jason Gerhard's MySpace  
15   account; is that correct?

16          A.    Yes.

17          Q.    When was that approximately?

18          A.    We became aware some time in early June.

19          Q.    When you say June, what year?

20          A.    June of 2007, sorry.

21          Q.    Did you gain access to Jason Gerhard's MySpace  
22   account?

23          A.    Anybody can get access to it. It was a public  
24   site and so you could pretty much go over anything he  
25   had, photographs, anything he had posted.

1 Q. And did you gain access to that account?

2 A. Yes.

3 Q. And did you print out a photograph from that  
4 MySpace account?

5 A. Yes, I did.

6 Q. Is that the photograph that is depicted in 1h  
7 for identification?

8 A. Yes.

9 MS. OLLILA: Your Honor, the United States  
10 moves 1h into evidence.

11 MR. IACOPINO: Objection, your Honor, lack of  
12 foundation, lack of relevance.

13 THE COURT: Mr. Lange, any objection?

14 MR. LANGE: Join, same grounds.

15 THE COURT: Overruled.

16 (Government's Exhibit 1h admitted.)

17 Q. BY MS. OLLILA: Dena, please bring up 1h.

18 Now, Deputy Berry, you have indicated that contained in  
19 this photograph is Jason Gerhard. Which of these  
20 individuals is Jason Gerhard?

21 A. He's the individual on the left with the blue  
22 staff shirt.

23 Q. You also indicated that Cirino Gonzalez is in  
24 this photograph. Where is Cirino Gonzalez in this  
25 photograph?

1           A.    He is adjacent to Ed Brown on the left.  The  
2   Hispanic individual with the glasses.

3           Q.    And you also indicated that the defendant  
4   Edward Brown is in the photograph.  Where is Edward  
5   Brown in the photograph?

6           A.    He's the third one in on the right there with  
7   the glasses and the mustache and the blue shirt.

8           Q.    Now, you also indicated that you conducted a  
9   search of a computer, is that correct, during the course  
10  of this investigation?

11          A.    I didn't do any searches of any computers.

12          Q.    Let me ask you this.  I apologize.  I'm  
13   showing you what is marked as Government's 41a for  
14   identification.  Do you recognize what that document is?

15          A.    Yes, it's a declaration of authentication of  
16   business records from Hotmail.

17          Q.    Why was that requested from Hotmail

18          A.    I did a search warrant on Cirino Gonzalez's  
19   Hotmail account.

20          Q.    So there was a search warrant for the Hotmail  
21   account of Cirino Gonzalez; is that correct?

22          A.    Yes.

23          Q.    And who was provided with the search warrant?

24          A.    I believe it was the individual at Microsoft,  
25   we served Microsoft.



1 Q. And after serving Microsoft did you gain  
2 information from Microsoft?

3 A. Yes. They initially sent us the CD with the  
4 contents of the e-mail.

5 Q. Is that CD what is contained in Government's  
6 Exhibit 41a for identification?

7 A. No, not specifically that CD. There was  
8 another CD that contained both accounts.

9 Q. All right, we will explain that. Was there  
10 another CD recently requested?

11 A. Yes, there was a -- data provided by CD, they  
12 gave me access to a secured server on Microsoft's site,  
13 all the data there, and then it was copied down from  
14 there and placed on the CD by myself.

15 Q. And in preparation for this trial did you  
16 again request the same documentation from the  
17 individuals at Microsoft?

18 A. Yes.

19 Q. And did they then provide you with that  
20 information on a CD rom?

21 A. Not a CD rom.

22 Q. Did they give you access to a secure web site?

23 A. Yes, secure web site.

24 Q. And once you got on that secure web site, what  
25 did you do?

1           A.    I downloaded the data for the specific  
2    account.

3           Q.    And once you downloaded the data for that  
4    specific account, what did you do?

5           A.    I unzipped that file and then I made a copy of  
6    the folder that was unzipped to.

7           Q.    All right, what does it mean to unzip an  
8    account?

9           A.    The account was compressed it was so large.  
10   It was over, I believe it was over two gigabytes, and  
11   that was close, I believe, in its volume to one and a  
12   half gigabytes of information there.

13          Q.    And then what did you do after that?

14          A.    When I unzipped it, I unzipped it into a  
15   directory. Then after that I made a copy of that  
16   directory on to the CD.

17          Q.    Okay. And so the CD that is attached to  
18   Government's 41a is actually a CD that you prepared; is  
19   that correct?

20          A.    Yes.

21          Q.    And you prepared that CD after gaining access  
22   through Microsoft in the account; is that correct?

23          A.    Yes.

24          Q.    And whose account were you gaining access to?

25          A.    Cirino Gonzalez's.

1 Q. And did you review all of those e-mails  
2 contained in that account?

3 A. Not all of them. It was very voluminous. I  
4 reviewed the ones that pertained to the time frame that  
5 we were looking at.

6 Q. And what was the time frame that law  
7 enforcement were looking at?

8 A. It was the beginning of 2007 on after that.

9 Q. Let me show you what is marked as Government's  
10 Exhibit 2d for identification. I'll ask if you  
11 recognize what that document is?

12 A. Yes, it's an e-mail.

13 Q. And how did you gain access to that e-mail?

14 A. Through the data that was given to me through  
15 Microsoft.

16 Q. And when you say through the data that was  
17 given to you through Microsoft, is that what you mean by  
18 Government's Exhibit 41a?

19 A. Yes.

20 Q. All right. And what is the date of that  
21 e-mail, Deputy Berry?

22 A. The date of this e-mail is May 28, 2007.

23 Q. Let me show you what is marked as Government's  
24 Exhibit 2e for identification. Do you recognize what 2e  
25 is?

1 A. Yes, it's another e-mail from the account.

2 Q. When you say it's another e-mail from the  
3 account, what do you mean?

4 A. It's another document that was generated  
5 through that account.

6 Q. Let me show you what is marked as 2f for  
7 identification. Do you recognize what 2f is?

8 A. Yes, it's another e-mail from the account.  
9 Again, it was another document generated through that  
10 e-mail account.

11 Q. What is the date of that e-mail?

12 A. This is June 4th, 2007.

13 Q. And again, are all these e-mails taken from  
14 the e-mail account of Cirino Gonzalez?

15 A. Yes.

16 Q. By the way, what was the name of that e-mail  
17 account?

18 A. Gonzobluegonzo@hotmail.com.

19 Q. Gonzobluegonzo@hotmail.com?

20 A. Yes.

21 Q. I'm showing you what's marked as Government's  
22 Exhibit 2 for identification. Do you recognize what  
23 Government's Exhibit 2 is?

24 A. Again it's another e-mail generated from that  
25 account.

1 Q. The e-mail account of Cirino Gonzalez?

2 A. Of Cirino Gonzalez.

3 Q. What's the date on Government's Exhibit 2?

4 A. May 17, 2007.

5 Q. Let me show you what is marked as Government's  
6 Exhibit 2a for identification. Do you recognize what  
7 that document is?

8 A. Yes. It's another e-mail generated by the  
9 Cirino Gonzalez account.

10 Q. And what is that dated?

11 A. May 18, 2007.

12 Q. Let me show you what is marked as Government's  
13 Exhibit 2b for identification. Do you recognize what  
14 that document is?

15 A. Yes. It's another e-mail from the Cirino  
16 Gonzalez e-mail account.

17 Q. And what's the date on that document?

18 A. 22 May 2007.

19 Q. 2c for identification, Deputy Berry?

20 A. Again, another e-mail from the Cirino Gonzalez  
21 e-mail account.

22 Q. And what's it dated?

23 A. May 23rd, 2007.

24 Q. Two more I'm going to show you at the same  
25 time. 2g and 2i for identification. What are these

1 documents?

2 A. These are both e-mails generated by the Cirino  
3 Gonzalez e-mail account.

4 Q. Now, Deputy Berry, when you print out an  
5 e-mail, do you have to take any special care in printing  
6 out the header versus the content?

7 A. Yes. With Microsoft it allows you to break  
8 that up. You can print out specifically the header, the  
9 content, or the entire message itself.

10 Q. With respect to all of these e-mails from  
11 Cirino Gonzalez's Hotmail account, did you print out  
12 these e-mails with a header?

13 A. Yes, I did.

14 Q. What is a header?

15 A. The header contains information about the  
16 e-mail, who it was generated from, at times general  
17 location, depending on what types of service you're  
18 using, where it's coming from, time zone that's  
19 generated on that server, and usually how it was routed  
20 to that e-mail account as going from server to server in  
21 order to get to that specific e-mail account.

22 Q. And did you engage in the same process with  
23 respect to each and every single one of these e-mails  
24 from the e-mail account of Cirino Gonzalez?

25 A. Yes.

1 MS. OLLILA: Your Honor, the United States  
2 would move into evidence 2d, e, f, c, a, b and 2.

3 MR. LANGE: Sidebar, please.

4 THE COURT: Pardon me?

5 MR. LANGE: May we have a sidebar, please.

6 THE COURT: Of course.

7 AT SIDEBAR

8 THE COURT: Counsel.

9 MR. LANGE: My position is that it's hearsay.  
10 I understand the government's position is that these are  
11 co-conspirator statements in furtherance of the  
12 conspiracy. My position with regard to that is that  
13 they have to establish the conspiracy by means other  
14 than simply the e-mails, and pursuant to Petrozziello  
15 the court has to at some time make determinations as to  
16 whether they've met that burden.

17 MR. IACOPINO: Same objection on behalf of Mr.  
18 Brown, your Honor.

19 MS. OLLILA: We already met that burden, your  
20 Honor, through the testimony that Danny Riley was at the  
21 residence during the time frame. That he had shipped  
22 Tannerite to his residence which he then brought to the  
23 Brown residence. Those boxes with the shipping label  
24 containing his New York address were contained on them.  
25 Your Honor also knows that he was there on June 7th

1 during the course of the conspiracy when law enforcement  
2 tasered him. All of these e-mails reference Ed Brown  
3 and other co-conspirators, including Cirino Gonzalez.  
4 They are all e-mails from Danny Riley to Cirino Gonzalez  
5 talking about actions by the co-conspirators.

6 THE COURT: Anything else?

7 MR. IACOPINO: Your Honor, at this point there  
8 is absolutely no evidence in this record that Tannerite  
9 was delivered at any time in conjunction with these  
10 e-mails.

11 THE COURT: I thought they found boxes --

12 MR. IACOPINO: There was --

13 THE COURT: -- on site.

14 MR. IACOPINO: There was Tannerite found there  
15 and there was boxes with the shipping label, but she was  
16 trying to tie it in to the time frame of these e-mails,  
17 and there's no evidence indicating that it actually  
18 arrived there during that time frame.

19 THE COURT: Anything else from anyone? All  
20 right, I'm going to admit these under Petrozziello.

21 MS. OLLILA: Thank you very much.

22 THE COURT: Subject to your --

23 MR. IACOPINO: Should we make an objection at  
24 the end of their case?

25 THE COURT: Remember to make an objection at



1 the end of all evidence.

2 MR. LANGE: Yes.

3 THE COURT: If you don't make it, I won't rule  
4 on it.

5 MR. IACOPINO: I understand, your Honor.

6 BEFORE THE JURY

7 Q. BY MS. OLLILA: Dena, please bring up 2d.

8 Deputy Berry, what is it that we're looking at  
9 in Exhibit 2d?

10 A. It's a header to an e-mail.

11 Q. Now Dena, I'd like you to highlight from and  
12 to. Do you see where that is? Who is this e-mail from?

13 A. It's from Danny Riley.

14 Q. Who is the e-mail to?

15 A. Cirino Gonzalez.

16 Q. Now Dena, on the bottom of the page, highlight  
17 the date.

18 What is the date that this e-mail was sent?

19 A. 28 May 2007.

20 Q. Now Dena, take that down and please turn to  
21 the second page and highlight.

22 What does this e-mail state, Deputy Berry?

23 A. It says Reno, I sent for 50 pounds of Brown  
24 Skin-a-rite. Hopefully it will be here when the other  
25 gear arrives. When all arrives is when I will be coming

1 out again. Was Ed happy that we are making progress?

2 D.

3 Q. Okay, Dena, you can take that e-mail down.

4 Dena, please pull up 2e and highlight the to and from.

5 Deputy Berry, who is this e-mail from?

6 A. It's from Danny Riley.

7 Q. Who is it to?

8 A. To Cirino Gonzalez.

9 Q. What is the date?

10 A. 29 May 2007.

11 Q. Now Dena, please turn to page two and enlarge  
12 that.

13 What does this e-mail state, Deputy Berry?

14 A. It says Reno, are you guys scoped up? No use  
15 in waiting then have to re-wait for the eyeball. I  
16 talked to Danny Tanner in Oregon today. It's a go. He  
17 said he's going to throw a little extra for me. He said  
18 he had over 150 orders over the weekend. Nice. I hope  
19 to be back out in a couple weeks. Dan.

20 Q. Now, Dena, please take that down and pull up  
21 2f and highlight the from and two.

22 Who is this from and who is it to?

23 A. From Danny Riley to Cirino Gonzalez.

24 Q. What is the date?

25 A. Dated 4 June 2007.

1 Q. Please turn to the second page. What does  
2 this e-mail state, Deputy Berry?

3 A. It says Reno, I will be there tomorrow. I  
4 think around 1 p.m. or so. Does Ed want rounds? Dan.

5 Q. Do you know what the term rounds means in law  
6 enforcement?

7 A. It means bullets.

8 Q. Dena, please pull up 2a and highlight the to  
9 and from.

10 Who is this e-mail from and who is the e-mail  
11 to?

12 A. The e-mail is from Danny Riley to Cirino  
13 Gonzalez.

14 Q. And when is it dated?

15 A. 18 May 2007.

16 Q. Now Dena, please pull up page two. What does  
17 this e-mail state?

18 A. It says Reno, I spoke with Dick and he said  
19 there is a cabine available. I believe that's a  
20 misspelling.

21 Q. What's a cabine?

22 A. Nothing. I believe it's a carbine.

23 Q. What's a carbine?

24 A. A rifle.

25 Q. Keep reading.

1           A.    They are supposed to come in early June from  
2   Florida.  Dick said we can come out next week and start  
3   the paperwork and pay so when they come in we can just  
4   go and get them.  I always get delayed so this is  
5   helpful.  How does Wednesday sound.  We can meet in  
6   Newport around 11:30 a.m., do our business and go our  
7   separate ways.  D.

8           Q.    Now, Dena, please pull up Exhibit 2.  What is  
9   Exhibit 2?

10          A.    It's an e-mail, a header of an e-mail.

11          Q.    Who is it from, who is it to?

12          A.    It's from Danny Riley to Cirino Gonzalez.

13          Q.    What is it dated?

14          A.    17 May 2007.

15          Q.    Now turn to the second page, please, Dena.  
16   And what I just want you to read is the very top of that  
17   e-mail, Deputy Berry.

18          A.    It says Reno, yes, this is the one we looked  
19   at, web address <http://serbu.com/top/bfg50.php>.  Here is  
20   the last e-mail I got from Stone Eagle.  He says, it's  
21   cut off a little but it says he will have one extra 50  
22   that is not accounted for in this order and that it is  
23   mine if I want it.  A second order will have to be  
24   placed to get another one which could take a few months.  
25   The demand is so high they are on back order according

1 to the shop I went to in Schenectady. When he let's me  
2 know when they arrive, I will go to Newport, New  
3 Hampshire, and get it, then come to you with it. I  
4 think you only need one for the house unless you want  
5 one for your personal collection, that's up to you, but  
6 it may take a while because of the demand. I hope I can  
7 get this on my own, if not, I will find a way.

8 Q. Now, what -- do you know what Serbu is?

9 A. Yes, they are a weapons manufacturer.

10 Q. Do they manufacture 50-caliber weapons?

11 A. Yes, they do.

12 Q. Do you know what Stone Eagle is?

13 A. Yes, it's a gun dealership.

14 Q. Where is it located?

15 A. Newport, New Hampshire.

16 Q. Dena, please bring up 2b and highlight the  
17 from and the two.

18 Who is this e-mail from and who is it to,

19 Deputy Berry?

20 A. From Danny Riley to Cirino Gonzalez.

21 Q. And when is it dated?

22 A. 22 May 2007.

23 Q. Turn to the second page, please, Dena. And  
24 what does this e-mail say?

25 A. It says Reno, I will be in NP NH around 11:30

1 a.m. My cell is 518-470-7443. First one there call the  
2 other one. Your number is 603-863-6411? I will be in  
3 my car. Confirm. D.

4 MS. OLLILA: Your Honor, I just have two more  
5 e-mails with this witness and that might be a good place  
6 to stop with these e-mails. Is that fine?

7 THE COURT: All right, we will finish after  
8 that.

9 Q. BY MS. OLLILA: Dena, please bring up 2c and  
10 highlight the from and the to.

11 And who is this from and who is it to?

12 A. From Danny Riley to Cirino Gonzalez.

13 Q. What is the date?

14 A. 23 May 2007.

15 Q. Now please bring up the second page, Dena.

16 What is this?

17 A. It's an address for Stone Eagle.

18 Q. Now, I neglected when I originally showed you  
19 the government's exhibit, I neglected to show you 2i.

20 Do you recognize what 2i is?

21 A. 2i is another e-mail from Dan Riley to Cirino  
22 Gonzalez.

23 Q. And how did you obtain that e-mail?

24 A. Through Cirino Gonzalez's Hotmail account.

25 Q. The same way you obtained all the other

1 e-mails?

2 A. Yes.

3 MS. OLLILA: Your Honor, the United States  
4 moves to admit 2i for the same reason, co-conspirator  
5 statements.

6 THE COURT: Same objections?

7 MR. LANGE: Same.

8 THE COURT: Overruled.

9 MR. IACOPINO: Your Honor, I also object on  
10 relevance, if you take a look at the statements --

11 THE COURT: All right, you have additional  
12 questions for this witness?

13 MS. OLLILA: No, just this is the last -- I  
14 have additional questions tomorrow.

15 THE COURT: For this witness.

16 MS. OLLILA: Yes.

17 THE COURT: I think we're going to stop right  
18 now.

19 MS. OLLILA: Okay.

20 THE COURT: Ladies and gentlemen of the jury,  
21 we've gone a little after. I'm going to release you at  
22 this time. Remember what I told you about not  
23 discussing this case. Don't read any news items,  
24 newspapers, et cetera, don't do any independent  
25 research, and I'll see you bright and early tomorrow

1 morning at 8:30. The jury's excused.

2 (Jury exited the courtroom.)

3 THE COURT: Anything else before we adjourn?

4 I'll see counsel in my chambers and we're in recess.

5 (Recess at 2:35 p.m.)

6 (In chambers at 2:45 p.m.)

7 THE COURT: Couple of things. Just in terms  
8 of scheduling. Government, how long?

9 MR. HUFTALEN: We rest tomorrow, probably  
10 10 a.m. at the latest -- well, depending on cross.  
11 We've got one witness after this witness and possibly a  
12 second, but if we do, he'll be very brief.

13 THE COURT: 10, 10:30. And Mr. Lange, are you  
14 going first?

15 MR. LANGE: No.

16 THE COURT: Oh, you're switching.

17 MR. LANGE: Mr. Brown is going to go first.  
18 I'll be there to pick up the pieces.

19 THE COURT: Mr. Iacopino, you've got the ball.  
20 Lateraled over to you. Are you going to put anybody on?

21 MR. IACOPINO: We have two witnesses under  
22 subpoena, your Honor.

23 THE COURT: Who are they?

24 MR. IACOPINO: Lauren Canario and Christopher  
25 Fazio.



1                   THE COURT: Are there any Fifth Amendment  
2 issues with any of those witnesses, either one?

3                   MR. IACOPINO: I don't believe so.

4                   MR. HUFTALEN: Lauren Canario was charged with  
5 her entry -- it was an entry into property or --

6                   MS. OLLILA: Something funky like that.

7                   MR. IACOPINO: Yeah, she got arrested for  
8 trying to go on the property after September 15th.

9                   THE COURT: All right. There are two. Fazio  
10 you said?

11                  MR. IACOPINO: Yeah, Fazio.

12                  THE COURT: What's the first name?

13                  MR. IACOPINO: Christopher.

14                  THE COURT: Chris. And the second person  
15 again?

16                  MR. IACOPINO: Lauren Canario. K-a-n-a-r-i-o  
17 (sic).

18                  THE COURT: Does anyone know whether we need  
19 to have her confer with counsel on Fifth Amendment  
20 issues?

21                  MR. IACOPINO: The stuff that we're going to  
22 ask her on direct has got nothing to do with that.

23                  THE COURT: I don't hear anything, all right.  
24 How long are you going to be, do you think? I'm not  
25 going to hold you to it.

1                   MR. IACOPINO: Neither one of them will be  
2 very long. I'll be surprised if either one of them is  
3 more than 10 or 15 minutes.

4                   THE COURT: So probably by 12:30 we'll be done  
5 with you.

6                   MR. IACOPINO: Unless Mr. Brown decides to  
7 testify.

8                   THE COURT: Okay.

9                   MR. IACOPINO: In which case --

10                  THE COURT: We may be a while. That's okay.  
11 That's perfectly fine. As I told you, I don't get paid  
12 by the hour. I'm happy to be here.

13                  All right, that's it for you, two witnesses  
14 unless Mr. Brown testifies. Is that right?

15                  MR. IACOPINO: Yes, that's correct, your  
16 Honor, I'm sorry.

17                  THE COURT: And Mr. Lange, 12:30 tomorrow I'm  
18 going to be looking at you.

19                  MR. LANGE: I have Susan Berge from  
20 Harrisville, Rhode Island. As far as I know she doesn't  
21 have any Fifth Amendment issues.

22                  THE COURT: All right. Susan Berge.  
23 Government jump in if you disagree.

24                  MR. LANGE: I have Scott and Catherine Dion,  
25 and they do have Fifth Amendment issues. I believe that

1 the government met with you ex parte on that.

2 THE COURT: Yes.

3 MR. LANGE: I have Shawn Farnsworth who is a  
4 contractor.

5 THE COURT: So we need to have Scott and  
6 Catherine talk to counsel.

7 MR. HUFTALEN: I think so, yes.

8 THE COURT: We may have to have a hearing. So  
9 do we have someone available, Debbie?

10 THE CLERK: Yes.

11 THE COURT: They need separate counsel.

12 THE CLERK: I'd have to talk to counsel about  
13 it.

14 THE COURT: All right, talk to them. Let's  
15 get that done first thing in the morning as soon as  
16 possible so we don't delay the hearing, so that we will  
17 put them on, see what they have to say.

18 MR. LANGE: The witnesses that I may be  
19 calling are Bethany and David Hatch. They are my  
20 client's children. But they may not be called. It  
21 depends.

22 THE COURT: All right, very good.

23 MR. LANGE: And the last witness is David  
24 Vonkleist. He performed at one of the concerts at  
25 Center of Town Road.

1                   THE COURT: No problem on Fifth Amendment  
2     there?

3                   MR. LANGE: Not as I'm aware. I can't say for  
4     certain whether --

5                   THE COURT: She may or may not testify.

6                   MR. LANGE: She may or may not testify.

7                   THE COURT: Okay, so it's possible we could  
8     finish tomorrow.

9                   MR. LANGE: I think it's unlikely, your Honor,  
10    that we will finish by tomorrow, but it is possible.

11                  THE COURT: Possible. So tomorrow is Tuesday.  
12    Assuming neither of the defendants testify we will  
13    finish up Wednesday morning. So counsel should be ready  
14    to close Wednesday.

15                  MS. OLLILA: How long do we have to close? I  
16    know my closing is an hour, maybe an hour and five  
17    minutes.

18                  THE COURT: I'll give you all the time you  
19    need for closing, I'm not going to hinder you, this is a  
20    long case. But once you tell me how long it's going to  
21    be, that's what I'm going to hold you to.

22                  MS. OLLILA: Okay, I'll say an hour and 15.

23                  THE COURT: Okay, you can tell me later as you  
24    get closer. You don't have to tell me. We will go  
25    through a charge conference -- what I do is we will have

1 a charge conference, I'll indicate where we are in terms  
2 of the instructions, we will do closing, and I give all  
3 my instructions at once. Some judges divide them up,  
4 some don't. I don't divide them up. I'll give my  
5 charge last and then send them out.

6 MR. LANGE: So the closings will be back to  
7 back to back.

8 THE COURT: One, two, three closing, jury  
9 instructions, out they go.

10 MR. LANGE: Do you recess --

11 THE COURT: I'll recess between them depending  
12 on time. I'm not going to run this jury forever, you  
13 know, I'll try -- tend to break at the same times  
14 depending where we are. Yes?

15 MR. HUFTALEN: Rebuttal closing? De minimus I  
16 know.

17 THE COURT: 15.

18 MR. HUFTALEN: And does it violate your  
19 courtroom practice if she does closing and I do the  
20 rebuttal?

21 THE COURT: No. You people care?

22 MR. LANGE: No.

23 THE COURT: Defendants don't object.

24 MR. IACOPINO: I've been the victim of both  
25 before, so it doesn't make any difference.

1                   MR. LANGE: The one thing I want to bring up,  
2   and I have an exhibit list which is fairly long, more of  
3   a wish list than an exhibit list, but a lot of what was  
4   on that list are statements by the defendants, and my  
5   client in particular, and I think the government's  
6   position is going to be that unless I call her they are  
7   inadmissible because they are not offered by party  
8   opponent and they are hearsay, and then the question  
9   becomes if Elaine testifies, are they admissible on some  
10  other ground.

11                  THE COURT: She can say them anyway. If she  
12  testifies she can say what's in the statements pretty  
13  much, can't she?

14                  MR. IACOPINO: I think part of the concern  
15  here, though, judge, actually I should have raised this  
16  too, depending on what Mr. Berry continues on to testify  
17  about what he found out there in the ether of the  
18  Internet, they are charged with knowingly and  
19  intentionally, by intimidation or threat, interfering  
20  with the actions of the marshals or with their own  
21  arrests by the marshals, and as I understand it the  
22  government intends to point to things that are out there  
23  in the Internet. There are other things out there in  
24  the Internet that clearly are not threats, that are  
25  clearly or clearly consistent with the defense, that

1 we're not doing anything but protecting ourselves from  
2 what we consider to be an unlawful thing. So I guess  
3 what I'm getting at is I think that in order for the  
4 jury to be fairly educated about what they were saying,  
5 that you have to allow both sorts of those things in  
6 there, and I'm prepared to do that depending upon what  
7 Mr. Berry testifies about through his cross-examination.  
8 I certainly think it also could come in, if the  
9 defendants should choose to testify, through them, but  
10 I, you know, it just seems to me that that's a --

11 THE COURT: I'll have to deal with it when it  
12 comes. Everything is fact specific. I'll make a  
13 determination based on objections as they arise. I  
14 don't want to give a declaratory judgment here. Yes?

15 MR. LANGE: I can reasonably assume that  
16 you're going to object to out-of-court statements by the  
17 defendants at least as part of -- prior to them  
18 testifying, in other words, you're not going to agree  
19 that those CDs and such that I gave you will come in.

20 MR. HUFTALEN: Correct. As you know from our  
21 discussions before the trial and through the trial,  
22 we've been very careful not to put in evidence of  
23 out-of-court statements by either of the defendants  
24 because we didn't want to be fighting the uphill battle  
25 of the rule of completeness and we kept that out of our

1 case entirely. And I understand your position is that  
2 all of those DVDs and video recordings all come in  
3 perhaps as 803(3) present sense impressions which we  
4 object to. We think any of those statements by the  
5 defendants are self-serving statements. They're not  
6 offered against the party in interest and I don't see  
7 any exception to the hearsay rules that would allow  
8 them, so yes, we're going to object to all of those, any  
9 statements by the defendants that were made out of  
10 court.

11 THE COURT: Go ahead, Mr. Iacopino.

12 MR. IACOPINO: Do I understand that you're not  
13 going to put in any statements either through Berry or  
14 the other witnesses that you have left about things Mr.  
15 and Mrs. Brown said?

16 MS. OLLILA: That's correct.

17 MR. IACOPINO: He's not going to put in any of  
18 the web site stuff or --

19 MS. OLLILA: No.

20 MR. HUFTALEN: He's going to put in some  
21 e-mail communications between Jason Gerhard --

22 MS. OLLILA: No, he's not. The ones that we  
23 have today are it. And I had neglected to indicate 2i  
24 was into evidence, your Honor, and you did review it and  
25 allow it in. I just couldn't find it.



1           THE COURT: Okay, so again, to the extent  
2 anyone is going to put in videos or whatever, I want to  
3 see them so I don't have to waste the jury's time. Give  
4 them to me in advance.

5           MR. LANGE: The other issue is, it hasn't been  
6 played yet, you agree that the surveillance video of  
7 Riley be played.

8           MR. HUFTALEN: Sure, you can play that any  
9 point when you want to.

10          MR. LANGE: I want to play that before you  
11 rest.

12          THE COURT: Okay.

13          MR. IACOPINO: Judge, the only other thing I  
14 wanted to raise --

15          THE COURT: Just a second, I'm just trying to  
16 think of something -- all right, I'll think of it. Go  
17 ahead.

18          MR. IACOPINO: Just with that 2i which Ms.  
19 Ollila, I don't know if it was actually part of the  
20 package that got admitted together or not, I didn't  
21 think it was, but just before we broke I had made that  
22 -- I argued that it was irrelevant. It's an e-mail that  
23 says why do you want to know, in response to one that  
24 says who wrote this. I don't think that has any  
25 relevance to, even under a co-conspirator statement

1 theory, there's really no relevance to that. To the  
2 extent it's been admitted, I would move it be stricken  
3 from the record.

4 THE COURT: 2i?

5 MR. IACOPINO: If it hasn't been admitted, I  
6 object to it being admitted.

7 THE COURT: Just a second, just a second, just  
8 a second. This appears to be an e-mail from Dan Riley  
9 to Art Pollack?

10 MR. IACOPINO: No, it's really an e-mail, as I  
11 understand it, from Dan Riley to Reno, and Reno has  
12 something under him that was from Dan Riley to Pollack  
13 but that was sent from Reno to Dan Riley, as I  
14 understand the way that this works, and I don't know who  
15 Art Pollack is. We have no idea who he is.

16 THE COURT: I'm not so much concerned about  
17 who they sent it to as much as who sent it. This says  
18 on the header sheet it's from Dan Riley to  
19 gonzobluegonzo.

20 MR. IACOPINO: That's Reno.

21 MS. OLLILA: Correct.

22 THE COURT: And then why do you want to know  
23 appears to be the initial message.

24 MS. OLLILA: Sure, we can redact that, your  
25 Honor, that's not important. It's the content contained

1 in the large paragraph that we're seeking to admit.

2 THE COURT: And that's from Dan Riley to Art  
3 Pollack.

4 MS. OLLILA: Yes, which was also contained in  
5 that e-mail, your Honor, so it was taken off of Cirino  
6 Gonzalez's e-mail.

7 MR. HUFTALEN: E-mail soliciting --

8 MS. OLLILA: Correct, correct.

9 MR. IACOPINO: This isn't an e-mail to Reno.  
10 It's in some other e-mail that Reno is forwarding, and  
11 as far as I know we don't have any background for this  
12 or who these people are. I mean, I assume these are  
13 only admissible under the co-conspirator --

14 THE COURT: Well, the statement has to be made  
15 by a co-conspirator. The statement can be made to a  
16 police officer.

17 MS. OLLILA: Correct.

18 THE COURT: Unless I'm misreading  
19 Petrozziello. The issue is not who is receiving the  
20 statement. The issue is who is saying the statement.

21 MS. OLLILA: And it's Danny Riley.

22 MR. IACOPINO: Right, but it has to be in  
23 furtherance of a conspiracy.

24 THE COURT: Well, the statement here, Dan  
25 Riley is saying this is what Ed needs, et cetera, et

1     cetera, et cetera. He needs clothesline, deerflies,  
2     flashlights, night vision goggles, smoke grenades, et  
3     cetera, et cetera, et cetera, that's what I'm -- among  
4     other things. Counsel, you work on this.

5                   MS. OLLILA: Sure.

6                   THE COURT: If you can't agree, I'll make a  
7     decision, but as far as I'm concerned, Petrozziello  
8     deals with whether a co-conspirator is making the  
9     statement and it's in furtherance of the conspiracy. He  
10    may be making it to an undercover agent. He may be  
11    making it to a police officer. In some cases they do.  
12    That has no relevance as to whether or not it's  
13    admissible per se, and -- is this in already?

14                  MS. OLLILA: I believe it is.

15                  MR. HUFTALEN: I think it's not.

16                  THE CLERK: My understanding was you moved for  
17    it. They objected. Then they asked if there were going  
18    to be more questions of Jamie Berry and there were, so  
19    you kind of put an end to it.

20                  THE COURT: Counsel talk to each other. To  
21    the extent you can work it out, fine. To the extent you  
22    can't, I'll deal with it before the jury comes in  
23    tomorrow.

24                  MR. LANGE: Your Honor?

25                  THE COURT: Anyone else?

1           MR. LANGE: I anticipate that there are going  
2 to be some gaps tomorrow because I think there, speaking  
3 for myself, I'm probably going to be making proffers as  
4 to what's on those CDs. I'll try and do it in the  
5 morning, try to offer it before you bring the jury in.  
6 And there are issues with respect to witnesses my client  
7 will agree and not agree to be presented, so I don't  
8 think tomorrow is going to go as smoothly as today.

9           THE COURT: Okay.

10          MR. IACOPINO: And I also would be surprised.

11          THE COURT: I'm dealing with very competent  
12 counsel. I have high hopes and expectations.

13          MR. LANGE: Hope we don't disappoint you.

14          THE COURT: I'm rarely disappointed, trust me.

15          MS. OLLILA: You are really or rarely?

16          THE COURT: I'm rarely. I am rarely  
17 disappointed.

18          MR. HUFTALEN: Until this week.

19          THE COURT: Okay.

20          MR. HUFTALEN: One other issue.

21          THE COURT: Yes.

22          MR. HUFTALEN: Mr. Iacopino's two witnesses.  
23 Lauren Canario, I don't see a problem with her  
24 testifying. Christopher Fazio. I've met with him. I  
25 think I know what the evidence is because we gave it to

1 Mr. Iacopino. We're going to object to Mr. Fazio  
2 testifying about -- Mr. Fazio is a radio personality.  
3 Conducted two recorded interviews of Ed and Elaine  
4 Brown.

5 THE COURT: Okay, when?

6 MR. HUFTALEN: When?

7 THE COURT: Yeah.

8 MR. HUFTALEN: While they were holed up in the  
9 house.

10 MR. IACOPINO: After June 7th.

11 THE COURT: When was the Riley incident?

12 MR. HUFTALEN: June 7th.

13 THE COURT: Go head.

14 MR. HUFTALEN: We interviewed them. We have  
15 recordings of the interview where they go into their  
16 whole tax stance, as if you will. We produced copies of  
17 both of those. I met with Mr. Fazio. I considered  
18 putting him on. The price of admission wasn't low  
19 enough for me, we didn't put him on. If he's going to  
20 be put on to talk about what the Browns have said or to  
21 authenticate his recordings of them, we're going to  
22 object to his testimony in its entirety, and I just  
23 don't want Mr. Iacopino to be blind-sided tomorrow.

24 THE COURT: So Mr. Fazio interviewed them and  
25 what's he going to say?

1                   MR. IACOPINO: He's basically going to talk  
2 about what they said during the course of their  
3 interview.

4                   THE COURT: And what is that? Do you have an  
5 offer of proof?

6                   MR. IACOPINO: Yeah, depending upon how much  
7 of it I were to get into, there are two lengthy  
8 interviews, and during the course of that, the parts  
9 that we are mostly interested in are those portions that  
10 they indicate that they were going to defend themselves  
11 from essentially what they considered to be unlawful  
12 force. That they haven't taken a shot I think is what  
13 they -- all of the -- any aggressive action was all on  
14 the part of the government, and I can make a better --

15                  THE COURT: Why don't you --

16                  MR. IACOPINO: -- better proffer for you in  
17 morning.

18                  THE COURT: After you go through it.

19                  MR. IACOPINO: I'll even put it in writing for  
20 you, your Honor.

21                  THE COURT: All right. When the jury comes --  
22 tell the jury, if we can tell them now, not to come in  
23 till 9. If they're already coming in, as soon as they  
24 come in tell them they're going to be delayed till 9.  
25 We'll start off with the proffer and we'll have argument

1 with regard to its admissibility, and then we will move  
2 on from there.

3 MR. IACOPINO: Okay.

4 THE COURT: Then we will let the government  
5 finish their case. If Fazio can testify as to some of  
6 it, you'll know. If not, you don't have to worry about  
7 it.

8 MR. IACOPINO: Thank you, judge.

9 MR. HUFTALEN: One other issue, and I should  
10 know the answer to this and I don't. I don't know if  
11 David Hatch has any Fifth Amendment issues. It was --

12 MR. LANGE: He doesn't.

13 MR. HUFTALEN: It was he who she was living  
14 with when she cut the bracelet off and went back.

15 MR. LANGE: Wasn't there when she --

16 MR. HUFTALEN: Okay.

17 MR. LANGE: I looked into that.

18 THE COURT: Okay.

19 THE CLERK: As far as the Dions, will you have  
20 them here in the morning so if we get counsel for  
21 9:00 --

22 MR. LANGE: We'll try to get them here by 9.  
23 I didn't think we were going to put our case in until  
24 Wednesday, so I'll scramble.

25 THE CLERK: And government, are there any



1 conflicts that you know of attorney wise?

2 MR. HUFTALEN: I'm not aware of any conflicts,  
3 no.

4 THE COURT: All right, thank you.

5 MR. IACOPINO: Thank you, your Honor.

6 THE COURT: Feel free to chat with each other.

7 (Adjourned at 3:05 p.m.)

8 C E R T I F I C A T E

9

10 I, Sandra L. Bailey, do hereby certify that  
11 the foregoing transcript is a true and accurate  
12 transcription of the within proceedings, to the best of  
13 my knowledge, skill, ability and belief.

14

15

16 Submitted: 11/3/09 /s/ Sandra L. Bailey  
SANDRA L. BAILEY, LCR, CM, CRR

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